# The Harvard Law School

## 1817-1917

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LIST OF ILLUSTRATIONS



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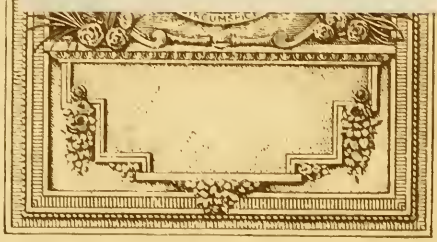


## NOTICE

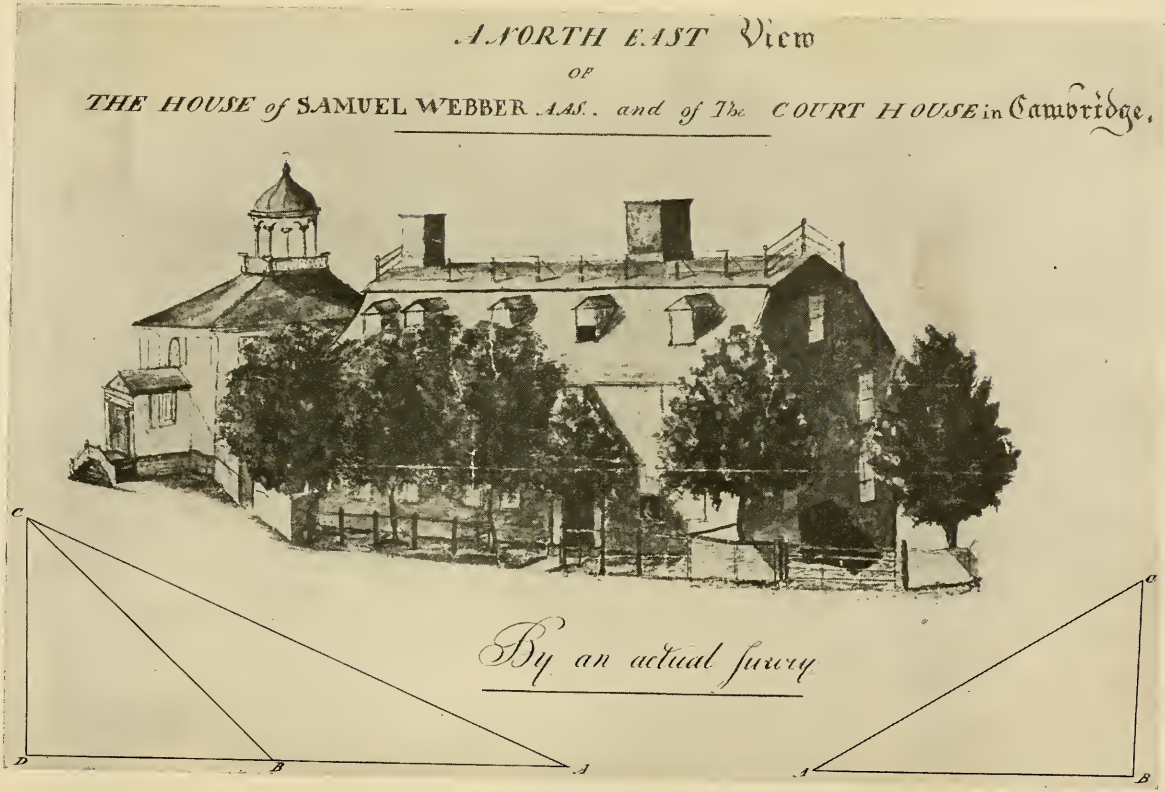
SINCE the plan for the organization of the Centennial Anniversary on June 19th and 20th were announced, and since this pamphlet went to press, further developments have made it necessary to postpone the celebration of the anniversary indefinitely.

The committee hopes that the circulation of this pamphlet may to some extent take the place of the celebration in focusing the attention of the alumni on the work of great law schools and their peculiar value, at periods like the present, in the history of popular government.

If the alumni will read this account of the School and its development and reflect on the significance of the service of scattering through the country highly trained minds for the practical study of the multitude of problems of civil liberty under law, the unique opportunity offered by this anniversary, which is described in the preface, and to take advantage of which the celebration was planned, will not have been wholly lost.

PUBLICATION COMMITTEE

June, 4, 1917




SECOND COLLEGE HOUSE

In which three rooms on the first floor were used for the Law School and its library from 1817 to 1832 when Dane Hall was built. The house was originally the home of Samuel Webber, Professor and later President of the University, and was afterwards bought by the college. The building at the left was the county court house, which stood on the site of the present building of the Harvard Co-operative Society on Harvard Square.

# THE HARVARD LAW SCHOOL

## CHAPTER I

### HISTORY OF THE SCHOOL

UNTIL the year 1784 the American bar had been recruited from students apprenticed to attorneys, or at any rate persons who learned law by service in the office of a lawyer. In the course of time certain lawyers obtained a reputation as good instructors, and their offices were resorted to by a number of students. These were often practitioners in the country, where a smaller volume of business left a man more time for the instruction of pupils. Thus, when Kent was a student in the office of Judge Benson of Poughkeepsie, he had five fellow-students. Shearjashub Bourne of Barnstable, Massachusetts, taught a considerable number of lawyers, among whom were Chief Justice Smith, of New Hampshire, Chief Justice Mellen, of Maine, and Judge Davis of the Federal court. Such an office was that of Judge Tapping Reeve, of Litchfield, Connecticut, in which in 1784 (or perhaps in 1782) was launched the first school of the common law in America; the transition was imperceptible between the law office and the law school.

The Beginning

The student in a law office read such books as happened to be there; and, if his teacher were conscientious, talked over the books with this preceptor. But there

could have been no idea of class work. Though several of the students were together in an office, each must have pursued his own course; there could in general have been no set instruction before the time of law schools. With the beginning of the Litchfield school, however, class work began. The teachers in that school divided the law into a number of topics, and they lectured in turn upon each of the topics, devoting eight or ten lectures to each. The students were expected to take down the lecture and to copy their notes into books; and copies of these notes, each copy bound in about three volumes, are preserved in the Harvard Law Library.

On May 26, 1778, Isaac Royall, a wealthy citizen of Massachusetts, then resident in London (he strenuously denied that he was a Tory refugee), made his will, and in it provided for "a Professor of Laws in (Harvard) College or a Professor of Physick and Anatomy, whichever the said Overseers and Corporation shall judge to be best for the benefit of said College." Royall died in 1781; but it was more than thirty years before the Corporation got together the proceeds of this legacy. Before 1815 they succeeded in collecting a sum of money which, with accrued interest, amounted to about seventy-five hundred dollars. On August 18, 1815, the Royall Professorship of Law was established, and Isaac Parker, Chief Justice of Massachusetts, was elected to the office.

In the thirty-seven years between the date of Royall's will and the election of the first Royall Professor of Law, several such professorships had been established at other institutions. The earliest was at William and Mary College, where the Commonwealth of Virginia established a Professorship of Laws during the year 1779–80, with the celebrated George Wythe as Professor. Judge James Wilson was Professor of Law at the College of Philadelphia (now the University of Pennsylvania) in 1790, and James Kent at Columbia College in 1793. The lectures

ISAAC PARKER

Associate Justice of the Supreme Judicial Court of Massachusetts 1806–1814, Chief Justice 1814–1830, first Royall Professor of Law 1815–1827. (*From a portrait in the Social Law Library in Boston.*)

of these professors, like those of the first Royall Professor, were delivered chiefly to undergraduates.

The duty of the Royall Professor was not to teach law to professional students. The endowment, as has been seen, was small, affording compensation for a few lectures only; and no time for more regular instruction could be spared from his engagements as head of a busy circuit-riding court (for at that time the Supreme Judicial Court of Massachusetts sat in each county in the Commonwealth, which then included Maine). The audience offered him was merely a voluntary meeting of College seniors and resident graduates, with perhaps a sprinkling of Boston lawyers; the same sort of audience to which the professors of law in the other colleges were lecturing.

Judge Parker's appointment did not involve the creation of a new department of the University; but several circumstances might have suggested such a new department to those in authority.

President Kirkland, who had spent some time in the German universities, introduced the elective system, undoubtedly in imitation of the German practice; and the organization of the German universities into several faculties must have suggested to him a separate faculty of law, as well as of divinity and medicine. Indeed, the separate schools of divinity and medicine were already formed or forming. Judge Parker himself, in his inaugural address (in April, 1816), had hoped that at some future time "a school for the instruction of resident graduates in jurisprudence may be usefully ingrafted on this professorship"; and this opinion seems to have been shared by many enlightened members of the bar. Whether the initiative came from the President or the Professor can probably never be known. On May 17, 1817, Judge Parker presented to the Corporation a plan in writing for a law school, which was adopted by the

Corporation on the same day, and Asahel Stearns was immediately elected University Professor of Law to take charge of the School. Such a step must obviously have been debated informally for several meetings; and the choice of the new professor required time. Judge Parker's plan must therefore be regarded not in any sense as the suggestion upon which the School was founded, but merely as the formulation of a plan already sufficiently considered and agreed upon.

The vote establishing the School provided for the appointment of a "University Professor of Law, who shall reside in Cambridge, and open and keep a school." It was to be his duty "to prescribe a course of study, to examine and confer with the students upon the subjects of their studies, and to read lectures to them appropriate to the course of their studies, and their advancement in the science, and generally to act the part of a tutor to them, in such manner as will improve their minds and assist their acquisitions." He was to be paid by the fees of the students. This was expressly declared by the Corporation to constitute "a new department at the University."

Having provided a professor, it was next necessary to assign a building. The College owned several dwelling-houses in Harvard Square; and one of them, the house formerly occupied by President Webber while he was Professor of Mathematics, and later by Professor Farrar, and in 1817 called "Second College House" or "College House Number Two," was chosen for the use of the School. It was an attractive two-story brick building, with a gambrel roof; and it was quite appropriate for a law school because it stood next the county court house. The court house then stood where the building of the Harvard Coöperative Society now stands, and Second College House was fifty feet further north. Three rooms on the ground floor were assigned to the School. One

of them was Professor Stearns' office; another room, thirty feet long, housed the library and was also used as a lecture room; the third was a small room for the librarian.

The story of the collection of the meagre library is told elsewhere; but the fact that these two rooms held professors, students, and library for fifteen years is sufficient witness of the insufficient number of books.

Professor, building, and library being provided, the new school opened its doors to students. But the students came slowly. They were excellent in quality; four out of every five were bachelors of arts. But the average number under Stearns was less than nine new men a year. They entered and left irregularly through the year, a fact that clearly indicates the desultory nature of the instruction. Indeed, the School under Stearns still retained many traces of the lawyer's office, in combination with methods of the Litchfield school. The chief work of the students was private reading of books recommended to them, with quizzes by the professor upon the passages read.

The School under Stearns

The School had, however, some distinct advantages over the old law-office training. A moot court was held, in which points of law were argued by the students. The records of the court from its establishment in 1820 to 1828 are still preserved, and contain formal reports of the meetings, the questions argued, and the decisions, with, oftentimes, a full copy of the pleadings and the judge's opinion. Stearns was Perpetual Chief Justice, while an Assistant Justice, elected from the students, sat in his absence. Written lectures were also delivered by the professors, which at the end of the period were described by Stearns as embracing "a general course of legal instruction, in which those parts of our system of jurisprudence in which we do not adopt the law of England

are particularly noticed and the grounds of our departure from it are explained and illustrated by the decisions and practice of our own courts." Although these lectures were evidently modeled after those at Litchfield, they were less frequent. This inferiority in class work was little more than formal, for the Litchfield students, like those in the mediæval universities, had to get their knowledge orally for lack of books. Having written out their own treatise, they proceeded to an individual study of it, while the students at Harvard could use the library. Yet it must be admitted that the new Law School showed no improvement in method over the old.

On the other hand, the foundation of a professional school of law at a university meant a far greater step forward than that taken by Judge Reeve. No English or American university had created a distinct school or faculty of law, but only professorships of law. With two professors of law teaching a body of students separately registered, the Harvard Law School was the first university school of law, as it is the oldest law school now existing, in any common-law country. To be sure, its imposing Faculty of Law was a bit misleading. For the twelve years of his incumbency, Judge Parker had no closer direct connection with the Law School than was afforded by the attendance of the students at his lectures and a vague understanding that he was occasionally to visit the School and examine the men. The working member of the Faculty was Asahel Stearns.

Stearns, upon his election, removed to Cambridge and took charge of the School; but his whole attention was not devoted to his professional duties. His reports to the President, made during the last three years of his incumbency, show an amount of time spent upon his duties at the School which can have occupied scarcely a third of his working hours; though the supervision of the moot court may occasionally have increased by half

the time spent at the School. He had never relinquished the office of County Attorney, which he held at the time of his election; indeed, his meagre income from the students could never have furnished him a decent support. That he did all he could to perform the duties of his professorship is unquestionable; indeed, at one time he complained of the amount of his work, and asked for a colleague. But the new venture in education needed men with vision to see and skill to bring to pass the possibilities of university study of law in America. Neither Stearns nor Parker had just the skill or the vision. The number of students, never large, toward the end of the period rapidly decreased. The University suffered the mortification of seeing her most promising sons seek legal training in an office instead of in her school of law.

There were undoubtedly many reasons for this falling-off quite independent of the quality of instruction: business depression which lessened the number of law students everywhere; the multiplication of law schools in other parts of the country; the difficulty of traveling; the greater expense of education in Cambridge; the inadequate quarters of the School. The fact remains, however, that Stearns taught law no better than others, that he possessed no general reputation, and that he did not so impress himself upon his pupils as to make them warm advocates of the School in the regions to which they went. The fame of the School was not propagated through the country by its graduates.

Early in the twenties the Corporation attempted to secure as an additional teacher a man of national reputation. Several times during the decade Judge Story of the United States Supreme Court was invited to become a professor; but he could not quite decide to accept. It was obvious, however, that the Faculty must be strengthened if the School were to live and grow.

As a first step, the Royall Professor must devote himself to teaching professional students; and since Judge Parker could not spare time for it, some one else must be found to take his place. In the fall of 1827 his resignation was requested — rather abruptly and ungratefully, perhaps, considering his services to the School — and on November sixth he handed in his resignation, which was at once accepted. A few months later Kirkland gave up the presidency of the University. The year 1828 was passed in discussion of policies and candidates for the presidency; the advocates of a sound business policy finally triumphed by the election, early in 1829, of Josiah Quincy.

Meanwhile, the Corporation were expressing dissatisfaction with the work of Stearns; and a committee was appointed to confer with him before Quincy's inauguration, who informed him that the Corporation regarded his administration as a failure. In a manly letter, explanatory rather than apologetic, he resigned. One passage in the letter is of special interest. "The effect which the Law School has had in raising the general standard of professional education, by introducing a more methodical and thorough course of instruction, has of itself, if no other benefit had resulted, more than compensated for the expenditure. The course of instruction pursued here, which was drawn up under the eye of some of the present members of the Corporation, has not only been adopted in other law schools, but more than sixty professional gentlemen in this and adjoining states have applied for copies for the use of their students. And what is still more important, students in law offices have been more attended to and better instructed in consequence of the establishment of the School." The resignation was accepted by the Corporation in a letter courteously recognizing his attainments and his diligence, and the way was open for a complete change in the School.

Various opinions, severe or kindly, have been expressed with regard to the work of Parker and Stearns. They did plan and start a great enterprise. If Parker had found an Ames to catch up his idea and touch it with life, the School might much earlier have affected the thought and training of the American bar; or if the genial and rather easy-going Stearns had served with one of his more exact and profound successors, he might have popularized the university study of law without depriving it of strength and vigor. As it happened, however, neither could supply what was missing in the other; and the critical verdict upon their work must be, that it failed because it lacked the vigorous purpose of true scholarship. They had only opened a lawyer's office to students, had superintended their reading, furnished their books, and talked to them about various branches of law. With the resignation of Stearns this experiment came to an end forever in this country; and some more scholarly and helpful method had to be invented for giving students legal instruction and training.

Nathan Dane was a distinguished lawyer of Massachusetts, former member of the Continental Congress, author of the "Ordinance for the Government of the Territory Northwest of the Ohio," and prominent Federalist politician. He began in 1800 and finished in 1826 the publication of his Abridgment of American Law, a work which then became indispensable to an American lawyer, and still has a value for its reports of early American cases not to be found elsewhere. In the preparation of this work he was following the example of the great English lawyer, Viner, whose Abridgment was yet authoritative.



Viner had founded the Vinerian Professorship of English Law at Oxford from the royalties of his book;

and the published lectures of his first professor, Blackstone, had become a legal classic. Viner's example, as has been seen, had been followed by benefactors in America. Dane, however, had greater reason than they for fostering legal learning. He had already followed the earlier example of the Englishman; what so natural as that he, a Federalist and admirer of all things English, should carry the imitation further, and establish a professorship of American law at Harvard from the proceeds of his Abridgment? This in fact he did, devoting ten thousand dollars to the foundation; and desirous of stimulating legal authorship like Viner, he provided that the lectures delivered on the foundation should be published. Story's series of Commentaries, Greenleaf's Evidence, Parsons' well-known works, and Langdell's published writings have all been issued in compliance with this provision.

The Corporation accepted the gift on June 3, 1829, and appointed as first Dane Professor Joseph Story, whom Dane had nominated. Story had already refused the Royall Professorship; but he was willing to become the head of the School and devote to it all the time which could be spared from the duties of his judgeship. He was, however, to have an assistant, who should give his entire time. Story, in his own words, was to aid the students "by occasional explanations and excitements," while the other was to do "drill duty." For this task the Corporation on June 11, 1829, appointed as Royall Professor John Hooker Ashmun of Northampton, who had been an instructor in Judge Howe's law school at that place.

The new professors were inaugurated on August 25, 1829, Story delivering an enlightened inaugural address. The School opened on September seventh, and at once attracted twice as many pupils as had ever been in attendance at the School at one time. This immediate success

continued and increased during the whole period of Story's service.

The chief event during Ashmun's professorship was the acquisition of adequate quarters. For three years the growing School continued in the small home of its infancy; and into it Story brought his large library, which the School had purchased. Just how large a portion of Second College House was then used for School work is not certain. Contemporary catalogues show that four upstairs rooms, numbered 6 to 9, were occupied by students, and that of the three downstairs rooms number 3 was set aside for the librarian. Presumably rooms 1 and 2 were those originally devoted to the library and the professors' office. Unless the School had spread into the floor above, and it had not done so in 1825, these two rooms still constituted the entire space occupied by the reading room, the professors' studies, the lecture room, and the library with its three thousand volumes. The need of a new building was great. Dane again came to the rescue. He had intended to leave the amount needed for the purpose as a legacy to the School, but, appreciating its immediate requirements, he advanced the money during his lifetime. He thus had the satisfaction of seeing the School properly housed three years before his death, in 1835, at the ripe age of ninety-two. On September 24, 1832, the "Dane Law College" was dedicated, to continue as the home of the School for more than fifty years.

Dane Hall in its first dozen years was a small oblong building with an ornamental portico in front and somewhat more spacious within than the earlier home across the street. The life of the School in its new surroundings must still have been simple; and the direct contact of the students with so distinguished a lawyer and so kindly a friend as Judge Story was in itself a liberal education. A pretty story is that of the Judge coming

into Dane Hall, one cold stormy morning, stamping off the snow, and saying to the students who crowded affectionately about him, "Gentlemen, this is one of the days when I would rather *facit per alium* than *facit per se*." "Do you remember," Dana wrote to Story's son, "the scene that was always enacted on his return from his winter session at Washington? The School was the first place he visited after his own fireside. His return, always looked for and known, filled the Library. His reception was that of a returned father. He shook all by the hand, even the most obscure and indifferent, and an hour or two was spent in the most exciting, instructive, and entertaining descriptions and anecdotes of the events of the term."

Ashmun, throughout his period of service, had been handicapped by ill-health; and on April 1, 1833, he died suddenly at the age of thirty-two, having in less than four years of service impressed his personality upon his colleagues and his pupils, who included some of the School's greatest graduates, although, feeble of body as he was, he could not in so short a time permanently affect the history of the School.

Ashmun appears to have continued the method of instruction of Stearns; but he was a man of greater force of mind. According to Sumner, he was "a lawyer of remarkable acuteness and maturity," who had the teacher's gift of exciting the desire for knowledge in the student. Story was the kindly master who in his lectures smoothed the rough places and was profuse with instruction and help; we may suppose his lectures, like his books, to have been learned, fluent, often original and profound, sometimes, however, dodging a difficulty rather than trying to overcome it. Ashmun furnished the "drill," the exactness and completeness of learning which was necessary but beyond Story's powers, in view of his other pressing engagements. Judge Hoar

JOSEPH STORY

Associate Justice of the Supreme Court of the United States 1811–1845 and Dane Professor of Law at the Harvard Law School 1829–1845. (*From an old print.*)

speaks of Ashmun as a "model teacher"; and his epitaph, placed by his students on a monument erected by them at Mount Auburn, fondly proclaims that "he had the beauty of accuracy in his understanding, and the beauty of uprightness in his character."

On April 23, 1833, only three weeks after Ashmun's death, Simon Greenleaf, of Portland, Maine, was appointed to the vacant professorship. He was a friend and correspondent of Story, and had been reporter of decisions in Maine. A temporary employment to carry on the School until the end of the academic year was necessary; and James C. Alvord, a recent student in the School who had already achieved a marked success in practice, was engaged for the position. Greenleaf began work with the beginning of the academic year 1833–34, and at once became a power in the School. To his progressiveness was probably due, in January, 1835, the appointment of Charles Sumner as instructor; a position which he held from time to time for ten years. In the same year another new step was taken in the division of the School into classes, according to proficiency. It is clear that lectures or conferences attended by the whole School, without reference to previous knowledge or to progressive power of assimilating knowledge, can never be of the same value as lectures on a basis of previous knowledge of law. The immediate effect of this change was to standardize the term of attendance. Before 1836 there was no regular time for entering or for leaving. Beginning with that year men rarely left except at the end of a term, that is, in January or July; and while they did not always enter at the opening of the term, it became more and more usual to do so. The advantage of the new practice to the class work can hardly be overstated.

At the beginning of his professorship Story laid stress upon the scientific aspect of law; and this was also em-

phasized by Greenleaf. As Richard Henry Dana said, entering the School in 1837, the students were "invited to pursue the study of jurisprudence as a system of philosophy." A few years later Greenleaf stated, "The attention of students is constantly drawn to the law as a science"; and added that, as a result, the law was "mastered with a facility and readiness, and in a spirit of sound philosophy, to which the student in his private clerkship is almost totally a stranger."

And so, not slothfully, for both professors confessed that they studied daily to increase in teaching skill as well as in legal learning, but quietly and uneventfully, growing ever in numbers and in grace, the School went on during the remaining years of Story's life, an institution of one hundred and fifty students, its fame spreading from America to Europe. English lawyers testified that the course was a great deal deeper and fuller than at Oxford, and that the method of legal education had very much raised the character of the profession.

Both Story and Greenleaf felt the need of additional instruction in the Law School. They had at one time suggested the appointment of an additional professor of law. Story, however, finally decided to resign from the bench and devote his entire time to the work of the School. All arrangements had been made when his sudden death in the summer of 1845 prevented the consummation of the plan.

The true founder of the School, Story brought to the work an enthusiasm for law as a science and a real affection for his foster-sons, the students, which at once became an inspiration to the young men gathered to learn from him. His students, to use Sumner's affectionate language, "love him more than any instructor they ever had before. He treats them all as gentlemen, and is full of willingness to instruct. He gives to every line of the recited lessons a running commentary, and

omits nothing which can throw light upon the path of the student. The good scholars like him for the knowledge he distributes; the poor (if any there be) for the amenity with which he treats them and their faults."

Behind a great institution there must always be a great personality; and such was Story. His position in the highest court in the land, his esteem among lawyers throughout the nation, first brought him students; but his geniality, his affectionate dignity, his enthusiasm for the School and all connected with it, the interest and the authority of his somewhat desultory teaching, all combined to secure its coherence and growth. He found it a lawyers' office, bereft, as he asserted, of students; he left it established and important, the accepted model of schools of law wherever the common law prevailed.

His death threw upon Greenleaf the whole burden of instruction. With the assistance of Sumner and a young graduate, John C. Adams, the year 1845-46 was passed without change in methods or policy. But with the election of William Kent as Royall Professor (Greenleaf passing to the Dane Professorship) an event of great importance took place; a curriculum made up of courses of instruction was substituted for the former system of the successive study of particular treatises. While this probably meant little immediate change in practice, the curriculum and courses of the present time could never have existed without such a change in arrangement, however formal it may have been. In no other way did Kent's too short term of service affect the life of the institution; and when this period came to an end with the appointment of Joel Parker as his successor in the Royall Professorship, and the almost simultaneous resignation of Greenleaf, it was still the flourishing, enthusiastic, hopeful, but somewhat primitive School of Story.

The task of the Faculty during this period was the development of a new and better system of instruction, and the gathering of a large body of students from all parts of the country, thus nationalizing the School. The young men whom Story's fame and the charm of his personality drew about him were to be leaders of their generation. They received from him an inspiration and a love for the scientific part of the law which set them well on their way to an intellectual life. Benjamin R. Curtis, Charles Sumner, Richard Henry Dana, William Maxwell Evarts, Ebenezer Rockwood Hoar, James Russell Lowell, and Rutherford B. Hayes, to name a few of the great souls of their generation who sat under him, caught fire from his spirit and gave to the law they practiced and the politics they guided an intellectual depth which was lacking in the life of the succeeding generation. From Greenleaf the students gained a sounder knowledge of law than his predecessors had instilled; but the School was still rather the inspirer of ideals than the moulder of legal thought.

**The School under Parker, Parsons and Washburn**

After a disquieting but vain attempt to persuade Rufus Choate to accept the Dane Professorship upon Greenleaf's resignation, the Corporation filled the place by the appointment of Theophilus Parsons, July 15, 1848.

The end of the preceding period had seen the School grow too large for the contracted quarters of Dane Hall, and an addition to the old building was required. This took the form of a transverse addition across the rear end, larger than the original building. This addition contained a large reading room and library, and a lecture room above. The old portion of the building was in large part devoted, on the ground floor at least, to rooms for the professors. In this enlarged building the third period of the School began. The patriarchal organiza-


HARVARD UNIVERSITY, CAMBRIDGE, MASS.

A view of Harvard University between 1832 and 1840 when Judge Story taught law in Dane Hall, which is shown at the extreme right of the picture. (*From an old print.*)

tion of Story's time was perforce abandoned. No longer could the head of the School greet his pupils before the big fire, and regale them with anecdotes of Washington life. Each professor retired to his room, where he read and wrote, and received his pupils one by one; the students were shepherded in their reading room, under the direct control of John Sweetman, the janitor,—a unique personality who made the library rules, picked up the books after the students, and discussed with them abstruse points of law, besides going to lectures and making suggestions to the professors for their improvement.

The serious difficulty to the recently appointed professors of undertaking their novel work was somewhat lightened by two instructors: Franklin Dexter and Luther Stearns Cushing. Dexter (1793–1857) had graduated at Harvard College in 1812; he was one of the foremost lawyers at the Boston bar. His lectures in Constitutional Law evidently impressed Senator Hoar, who, in his Autobiography half a century later, names him first of all his law teachers; but his one year of teaching made no great impression on the School. Cushing is best known as a Reporter of the Supreme Judicial Court of Massachusetts, and as the author of an authoritative treatise on Parliamentary Law. He taught that subject for three years, and was also the first person to conduct in the School a course upon the Civil Law. Parsons urged that he be made professor, but the Corporation declined to follow the recommendation.

In the autumn of 1849 Frederick Hunt Allen was chosen as University Professor of Law. He had won a high place at the bar in Bangor, and was "strongly recommended by many Maine lawyers," but the appointment can hardly be regarded as more than a curious accident. He seems to have been no better qualified

for the position than half the country judges of New England. The experiment was not a success, and at the end of the year he was not reappointed.

On January 31, 1852, Edward G. Loring became a lecturer, and he conducted courses and sat in the moot court for two years until, in 1853, the number of students had so increased that a new professor was felt to be necessary. Parker and Parsons favored the appointment of Loring, "whose services so far as we know are very useful and entirely satisfactory." The Corporation elected him a professor, but unfortunately he had for more than ten years been United States Commissioner, and would be called upon to act in fugitive slave cases, and the anti-slavery men on the Board of Overseers, then a political body, opposed confirmation. The Corporation thereupon withdrew his name. Loring continued to serve as Lecturer, to the apparent satisfaction of the students, until 1854. In that year he was called upon to issue a warrant for the apprehension of Anthony Burns, an alleged slave fugitive, to hear the testimony, and to order his return to slavery. This was one of the cases which aroused the anti-slavery feeling of Massachusetts; and Loring became intensely unpopular for his part in the matter. The students, the Faculty, and the Corporation stood loyally by him, being unable to see why he should be detested for doing his plain legal duty; and he was reappointed Lecturer for the year 1854–55. The Overseers, however, overruled the appointment.

In his place the Corporation appointed, first as Lecturer and then as University and Bussey Professor, Emory Washburn, lately Governor of Massachusetts. From this time the School was under the direction of the triumvirate, Parker, Parsons, and Washburn.

From the point of view of the School's progress this period was an uneventful one. The curriculum and the

general methods of instruction changed only gradually, if at all; the number of students, leaving out the years of civil war, increased and then fell back; the life of the students, their methods of study and devotion to work, remained about the same. The names of Story and Greenleaf were still the names to conjure with, and their characters, qualities, and methods were curiously repeated in their successors. Parker recalled Greenleaf in the exactness and profundity of his learning, the sobriety of his character, and his power to stimulate the minds of the best men. He was the stiff and formal man of law, learned and profound — quite too profound to reach the average mind, but regarded as "the fountain of jurisprudence" by his most brilliant pupils; a hard fighter, grim and sarcastic against what he regarded as wrong; not fluent and easy to follow, and even obscure at times; but manly, forceful, reliant, and reliable. Parsons was Parker's complement. Like Story he was amiable, enthusiastic, anecdotal, and even chatty, delighting in converse with the students, and not given to over elaboration or subtlety in his teaching. Genial and frank in manner, fluent and convincing in statement, clear and skillful in exposition, interesting and impressive, he was an ideal teacher for the average student, and persuaded the very ablest that he was "almost, if not quite, a man of genius." Washburn was the best loved of the three. He took a great interest in every student; his room was open to his pupils at all times. He lectured vividly and eloquently; he was one of the few teachers in the history of the School who have used that method. He made the dry rules of Property live, and his lecture room was a place of enthusiasm.

The other two men used a different method. Their teaching began with a continuation of the older system: study of a required text and an examination in class upon the text, with verbal comments by the instructor. As

time went on, the instruction tended to take the form of lectures on the subject, with occasional quizzes of the students; but the change, if there was one, was in emphasis, not in kind. Judge Parker made an exact assignment in the textbook and covered it faithfully. Parsons also used a textbook, but he encouraged discussion, explained extraneous difficulties, and showed in many ways a better teaching method. In every period of the School's history, but particularly in the School of Parker, Parsons, and Washburn, the very differences of methods of instruction were in themselves an education.

The only temporary appointment during the administration of these three men was that of Richard Henry Dana, as Lecturer on the Law of Nations from 1866 to 1868.

Politics shared the thoughts and activities of professors and students during this period. The earliest alumni association, the Story Association of 1850, was wrecked a-borning by reason of political feeling. It celebrated its first year by a dinner with an oration by Rufus Choate; the oration was eloquent, sensible, even inspiring, but conservative. The radicals of the day attacked it as unsuited to do honor to Story the progressive; the contest raged, and the Association died. Soon after this came the denial of a professorship to Edward G. Loring, because he had stood up against the prevailing political opinions of his time. Washburn indeed proved a professor who could let politics alone, though in time of need he served his country in the home guard. But Parker and Parsons plunged into political discussions, and maintained them until the end of the period. Both at first took the anti-slavery side; but after the outbreak of the Civil War Parker's natural conservatism began to control him, and he was soon engaged in an acrimonious contest with his more radical colleague. This contest, and others similar, embittered the last years

of Parker's service, and no doubt influenced his resignation, in 1868.

"The School of Parker, Parsons, and Washburn" was a real institution of learning. The professors were men of power and impressed their students as only really great teachers can; the students regarded the School as "without a rival," to use the phrase of Mr. Justice Brown. In the opinion of Mr. Joseph H. Choate, this was the golden age. It is not surprising that the Visiting Committee for 1864 reported that they "were entirely satisfied with the condition of the School."

And yet this institution, led by men of such varied yet precious gifts, with a student body drawn from east, south, and west, enthusiastic and reasonably diligent, became as years went by an essentially unscholarly place. Science, the aim of Story and Greenleaf, was no longer regarded as the object of study in a law school. The purpose of students of this time in the School, as well as in the later career of their generation at the bar, usually was practical and self-centered in the highest degree. There was, as Judge Phelps has said, "a distinct anti-Story reaction." The library was richer in the literature of the foreign law than any other in the country; but "not one of the works of these foreign jurists was read by any student." Judge Blake, insisting that the students of this time "did not waste their opportunities," adds that "twenty-five per cent would have passed a satisfactory examination in the courses there prescribed." Mr. Joseph Choate says that "whoever wanted to learn, learned quite enough."

There was an attempt to stimulate scholarship by the offer of prizes for legal essays; and during this period the School conferred such prizes on many students who subsequently justified the honor. For a few years students of merit and need were honored by appointment as assistants to the professors; assistants, not in teaching,

but in investigation. To this practice we owe the remarkable work of Langdell, while a student, upon Parsons' Contracts, — work which was the precursor of his epoch-making Cases on Contracts. The moot courts carried on by the Faculty were also a stimulus to the study of law, and a student's organization for debate, called first the Parliament and later the Assembly, pursued a chequered career, troubled by the party politics of the northern and southern students, and now and then suppressed by the Faculty.

Yet at the end of this period of trial something was felt to be lacking. The satisfaction with the School, expressed by the professors year after year, seemed perfunctory; students began to fall off, and soon after Judge Parker's resignation, the Visiting Committee of the Overseers reported, in 1869, that in their opinion the condition and prospects of the School "should be carefully considered by a committee." This report led to the resignation of Professor Parsons. The period ended, like the first period, in a verdict of failure, rendered by a jury of eminent lawyers; and although Parker, like Stearns, vigorously attacked the verdict as unjust, it has been approved by time.

What reasons can be given for this failure? Lack of vision, of progress; self-satisfaction apparently justified by the continued outward success of the School; failure to read the signs of the times.

Everything about the School was stereotyped. For twenty years the language of the Catalogue as to entrance, course of study, and degree was not changed by a letter. There was no recorded faculty meeting during the entire period. The Corporation framed the general rules for the School, in which the Faculty were endowed with the following functions: to license boarding-houses and public meetings, to administer discipline, to recommend candidates for degrees, to make regula-

tions for the use of the library. Even this last power of the Faculty was abolished in 1855; and from that time the library rules were made in theory by the Corporation, in practice by the janitor. A Corporation making regulations for the School, but never entering it, and a Faculty that never met — how could they face the new needs which arose with war and reconstruction, inflation and the new industrialism?

A public indictment was brought by the *American Law Review.* "For a long time the condition of the Harvard Law School has been almost a disgrace to the Commonwealth of Massachusetts. We say 'almost a disgrace,' because, undoubtedly, some of its courses and lectures have been good, and no law school of which this can be said is hopelessly bad. Still, a school which undertook to confer degrees without any preliminary examination whatever was doing something every year to injure the profession throughout the country, and to discourage real students. So long as the possession of a degree signified nothing except a residence for a certain period in Cambridge or Boston, it was without value." This rather bumptious criticism is obviously exaggerated, and Parker's indignant rejoinder may be viewed sympathetically; the facts stated affected only the degree, the guinea's stamp. The character of the instruction and its effect on the student body made the School, and the School was, so far as it went, good. It failed because it remained content with the excellence already attained without striving to go forward.

Nothing was done to impose requirements for admission except a certificate of good character, which had been sufficient for most of the previous history of the School. It is true that down to 1865 about two-thirds of the students had been college graduates, but the proportion began to diminish after 1845, and from 1865 to 1870 it suffered a sudden reduction, very likely as a result of

the Civil War; during these years the number of college graduates was considerably less than half of the entire number. This diminution in quality of the students doubtless had its influence in laying the work of the School open to criticism; but the Faculty remained quiescent and felt no need of any improvement.

Nor had any important change been made in the course of study during the period. The traditional subjects were still pursued, through the use of textbooks, and the textbooks were changed only to introduce the new works of members of the faculty. Room was found for a few years for a course on Arbitration, but the subject of Torts they never discovered, though it was growing rapidly in importance during the period. Most of the courses were given only in alternate years, thus securing the teaching of all the subjects in the curriculum in time, but a student could enter, take all the courses offered to him, and receive his degree after a year and a half of residence without a chance to pursue such fundamental topics as Contracts, Agency, or Evidence. Neither attendance nor preparation was required for recitations or lectures, and as a considerable part of the class sat in the seats of the unprepared, the exercise furnished no test of the work done by a student.

There was no other test. The degree, given for the payment of three term fees, was more expensive, but in other ways indistinguishable from the contemporary degree of Master of Arts. The written examination, on which the degree now rests in every American university, was not known. The preparation for examination, the review of the year's work, which is the only really constructive work required of a student of law, troubled not the nerves of the weakling. "There was no cramming," says Mr. Joseph Choate, "which is such a vitiating feature, in my judgment, in the modern methods." In fact, the degree was no warrant that

the holder of it had in any way mastered the difficulties of a single branch of the law.

The attitude of the Faculty towards the School is typified by a sentence of their report to the President of the University, first invented in 1860 and repeated unchanged each year until the end of the period: "There have been no new arrangements in relation to the organization of the School or the course of instruction," to which was added, in later years, "The Faculty have nothing to add to their previous reports on these subjects."

It would be unjust, however, to blame this intense conservatism as if it were peculiar to the Harvard Law School. It was shared by every law school in the United States; one might almost say, by every institution of learning. Scholarship was at that time so universally conservative that this quality had come to be accepted as necessary to a scholar. The only criticism that can be leveled at Parker, Parsons, and Washburn is that they were not in advance of their time; but fortunately those men of light and leading, Mr. Eliot and Mr. Langdell, were soon to bring to the Harvard Law School the glory of leading in the reform of legal education.

**The Deanship of Langdell**

The appointment of Christopher Columbus Langdell, to succeed Parsons, was a personal act of the new President. Eliot himself has stated the reason for his choice. Twenty years before, when the new President was a junior in college, he used to go often in the early evening to the room of a friend who was in the Divinity School. "I there heard a young man who was making notes to Parsons on Contracts talk about law. He was generally eating his supper at the time, standing up in front of the fire and eating with good appetite a bowl of brown bread and milk. I was a mere boy, only eighteen years old; but it was given to me to understand that I was listening to a man

of genius. In the year 1870 I recalled the remarkable character of that young man's expositions, sought him in New York, and induced him to become Dane Professor. So he became Professor Langdell." Langdell was at this time a rather obscure though far from unsuccessful laywer in the city of New York; member of a firm which gave to the United States an attorney general and a district judge, but himself known chiefly to a small circle of lawyers. Heretofore, in selecting a professor, the object of the Corporation had been to secure a man of mark, whose prestige would increase that of the school; a man who, by long practice in the law, had become familiar with the content of it. The principle which underlay Langdell's selection was quite other; as he himself explained, a teacher of law should know expertly not so much the content of the law as the method of studying it. "What qualifies a person, therefore, to teach law is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of causes — not experience, in short, in using law, but experience in learning law; not the experience of the Roman advocate or of the Roman prætor, still less of the Roman procurator, but the experience of the jurisconsult."

For a long time the wisdom of this change remained doubtful in the mind of the American bar. As a protest against it, the Law School of Boston University was founded, having on its Faculty eminent members of the Boston bar, and for many years it was regarded as a more practical school for lawyers than the Harvard Law School. Not until Ames' appointment as assistant professor in the year 1873 can it be said that the new method of appointment was accepted even at Harvard.

The School to which Langdell returned after sixteen years of uneventful practice in New York was little changed in character since his student days. However,

the senior professors had resigned; the School was falling off in numbers; the profession was beginning to feel that something of scholarship was lacking in its organization. But a new President was in office, and new statutes had been passed for the governance of the School. Two important changes were required by the Corporation. The Faculty was to meet and choose a dean; and the degree was to be awarded only after examination.

"The Faculty of each professional school," the new statute ran, "elects a Dean, whose duty it is to keep the records of the Faculty, to prepare its business, and to preside at its meetings in the absence of the President."

In accordance with this statute the first recorded faculty meeting in the history of the School was held on September 27, 1870, with the President in the chair; and on motion of Professor Washburn, Langdell was elected Dean.

The office thus outlined in the statute was little more than the secretaryship of the Faculty. There was no precedent for the interpretation of the provision; deans were novelties in American education, and Langdell was probably the first to head a faculty of law in the country. His election therefore meant nothing as to his position in the Faculty. Without a conscious purpose in the mind of the first incumbent, the function of dean might have come to be merely that of a clerk. But Langdell had a mission. The deanship was to be in his hands an instrument of reform. He was a strong man with a mind to do; his successor was another; and their terms of office, extending through critical years of legal education, fixed the office of dean of a faculty of law, for the entire country, as an office of leadership and of eminence.

The new-fangled position was no sinecure for its first occupant. He came as a reformer; his two colleagues, Washburn and Nathaniel Holmes, who had succeeded

Parker as Royall Professor, were conservatives. The reforms he wished to institute were likely to diminish the students further rather than attract them. His predecessors had been willing to do things without consulting their colleagues, unless indeed they left the Corporation to do them; he might have done as they did, made his new rules, secured the approval of the Corporation, and thus effected his reforms unopposed. But this was not Langdell's way. His loyal and justice-loving soul would have loathed such a victory. It was his nature to regulate every least act by some well-founded principle. Throughout his life as Dean, he was never content to justify action that he proposed by its intrinsic usefulness; he must elaborately consider its conformity to principles already laid down by the Faculty, or else present it as an application of some principle, not indeed previously acted upon, but of unquestionable legal validity. His remarks in support of proposed legislation had all the characteristics of judicial opinions; the recorded votes of the Faculty he regarded as judgments, and they were usually accompanied in the record by brief lawyer-like reasons. Such a man could certainly not do without meetings of the Faculty. To them he turned to secure the reforms he sought: the revision of the curriculum, more stringent requirements for admission and for graduation, the standardization and graduation of courses, a written examination upon each course, and the lengthening of the term of study for the degree. On each of these reforms he must expect to find his two colleagues lukewarm or opposed to him. His reliance for accomplishing his plans must be upon his own power of persuasion, and upon the vote and influence of the President.

To Eliot, though he was interested both by natural bent and by education in the scientific studies rather than the humanistic, and apparently never much in

sympathy with what must have seemed to him the artificial and unscientific principles of law, we owe the success of the new experiment. Led by his sense of what was right, desiring above all that every department of the University should have the utmost scholarly development, he not only brought Langdell to the School and made him Dean, but he stood behind him in the trying years of change. By means of the power that a President may legitimately wield in such a crisis he secured the appointment of the remarkable teachers whose memory is the glory of the later School. Thus by voice and vote in meeting, by support in the Corporation, and always by sympathy with every movement for strengthening the scholarship of the School, Eliot helped and encouraged Langdell in the work of change. To this work Langdell now addressed himself; and the history of the School for the ensuing twenty-five years is the history of these reforms.

The first act of the new Faculty was to establish a progressive curriculum. Under the old system nearly every subject was taught in alternate years to a class composed of both first and second year men. The subjects were now divided into first and second year courses, and no student was to be given credit in the subjects of the second year until he had passed the first year examinations. The curriculum was also modernized by the introduction of Torts. Another early step was the abolition of prizes and the offering of scholarships covering the tuition fee to men of high rank who were unable to support themselves. No scholarships have ever been awarded in the School in the first year, since the first year student cannot meet the requirement of proved success in legal study. Several years later a small loan fund became available, and from this first year men and others whose rank did not entitle them to a scholarship have from time to time received help.

The scholarships have always been regarded as a deferring of the payment of the tuition fee, and a considerable amount of money has been paid back to the School on account of scholarships received in course.

During the first three years of the new régime a number of lawyers at the bar or on the bench were appointed to assist Langdell and the two older professors by giving instruction in particular courses. Three of these, Bradley, Gray, and Holmes, afterwards became regular professors. The other lecturers were Edmund Hatch Bennett, afterwards the first Dean of the Boston Law School; Nicholas St. John Green; John Lathrop, upon Shipping and Admiralty; Benjamin Robbins Curtis, late Judge of the Supreme Court of the United States, upon the Jurisdiction and the Practice of the United States Courts; and Benjamin Franklin Thomas, upon Wills.

In 1872–73 John Himes Arnold began his long service in the Law School, which continued for forty-one years, until his resignation upon September 1, 1913. Chapter III of this book describes his great work in the development of the library.

The next year, 1873–74, marks the appointment of two of the teachers whose services to the School were a large factor in its success. James Barr Ames was appointed Assistant Professor of Law June 2, 1873, and James Bradley Thayer became Royall Professor of Law on December 8, 1873.

The appointment of Ames created even more surprise than that of Langdell. He was a recent graduate of the School, without experience in practice, but he had won considerable success as a teacher in Harvard College. President Eliot, in explanation of the choice, said that it would not be surprising if young teachers could do a portion of the work of instruction better than older men. The Corporation and the Board of Overseers gave their

consent with reluctance, but the success of the young man then in question abundantly justified the President's explanation. "What is to be the ultimate outcome of this courageous venture?" asked Eliot, fifteen years later: "In due course, and that is no long term of years, there will be produced in this country a body of men learned in the law who have never been on the bench or at the bar, but who nevertheless hold positions of great weight and influence as teachers of law, as expounders, systematizers, and historians. This, I venture to predict, is one of the most far-reaching changes in the organization of the profession that has ever been made in our country."

In 1875 the system of the last five years of employing lecturers who were in practice at the bar was definitely abandoned. Experience seemed to show that temporary appointees who were practitioners did not make the best teachers of law, and that a man who could teach law well as a lecturer could teach it far better as a permanent professor. Many qualities which lead to success at the bar are of little value to the teacher; on the other hand, devotion to teaching as a life work is essential to the best work in teaching. The immediate result of this determination was the addition of a fourth full professorship of law, the Story.

To this was appointed John Chipman Gray. Gray's connection with the School as a teacher was the longest in its history. More than forty-three years elapsed from his appointment as Lecturer on Law, on December 24, 1869, to his resignation on February 1, 1913, and his continuous service was over forty-one years.

In 1874 the Faculty had made further provision for the homogeneous character of the student body by requiring that the law student be nineteen years of age on admission. As early as 1875 the teachers announced their opinion that a college training was a desirable pre-

requisite to professional training in law. The Faculty voted with the approval of the Corporation that "the course of instruction in the Law School is designed for persons who have received a college education"; but that "for the present, young men who are not bachelors of arts will also be admitted to the School as candidates for the degree upon passing satisfactory examination." This action of the Faculty and Corporation was severely attacked in the Board of Overseers, and a long discussion ensued, but the opposition resulted in no action, and the matter was finally dropped. The admission examination of candidates for degrees who were not graduates of colleges remained in force so long as persons not college graduates were admissible.

In 1876 the Faculty voted to lengthen the course of study for the degree to three years. As in the case of other of Langdell's reforms the Faculty here willingly took a step which it knew was beyond its power immediately to enforce to the full extent. The three years' course was adopted, but it was also provided that persons might remain in the School for two years and then receive the degree upon passing the examinations at the end of the third year without attendance at the classes of that year. During the same year and thenceforth the position of the Law School as a real institution of learning, with a degree that stood for definite achievement, was recognized by the invitation to a person in its graduating class to appear upon the Commencement platform.

In April, 1876, Professor Emory Washburn resigned. While he had been loyal to the new régime, and concurred willingly in every action that tended to raise the standard of the School, he was too old comfortably to accept and employ the new methods. A man in his position with a less amiable and enthusiastic nature might very seriously have hampered the work of reform; and it is to his lasting credit that instead of hindering

he helped. Progressive as any person of his age and traditions could be, it is nevertheless not surprising that he was unable fully to fit into the new order of things; and his resignation while regretted was not a matter for surprise. The high appreciation of his work which was expressed by the President and Corporation, and by the Visiting Committee of the Overseers, was no mere form. His death a few months after his retirement was deeply mourned by every professor and student in the School.

Washburn was succeeded in the Bussey Professorship by another successful lecturer in the School, Charles S. Bradley, of Providence, a former student and a quick and fertile lawyer, recently Chief Justice of Rhode Island. After three years, however, Judge Bradley returned to practice, which he found was more congenial than teaching. Meanwhile Ames had resigned his position as assistant professor, with the expressed intention of entering practice. His success as a teacher, however, had been so great and his loss would have been so detrimental to the School that the Corporation at once elected him to a full professorship. This election, offering him a permanent teaching career, was accepted; and upon the resignation of Bradley he was appointed to the vacant Bussey Professorship.

From this time for more than a quarter of a century the four great teachers — Langdell, Thayer, Gray, and Ames — carried on an enthusiastic and increasingly successful School.

To thousands of their students this was the high-water mark of the School's history, but on such a question there will always be a split of authority. Not long ago several members of the class of 1896 met and spoke of their time as the golden age of the Law School, referring with appreciation to Langdell, Ames, Gray, Smith, and Thayer, as well as others. The father of one of the men, who had himself been a member of the class of 1863,

happened to be present. He said, "Young men, you doubtless went to a very fine law school taught by a competent Faculty; had you a man who wrote on real property with the authority of Emory Washburn, or on all phases of business law with the distinction of Theophilus Parsons, and had you as lucid a teacher as Joel Parker? And yet I will not myself claim to have attended the law school in its golden age, because when I was there there were many who still remembered Joseph Story as a teacher of law, and who insisted that the most flourishing period of the School had been in his day." To others the deanship of Thayer is so glorious to recall that it seems impossible that any earlier time could have been more wonderful. For each of us indeed the days he spent at Harvard Law School are a golden age.

Langdell's skill as administrator — a skill which remade the School in every important particular — is overshadowed and almost forgotten by reason of his services to legal education in the invention of the new method of study and teaching, which bears his name. This he appears to have worked out while he was a student in the School; and with the opening of the first year of his service as professor, in the fall of 1870, he put it into operation.

"The day came for its first trial. The class gathered in the old amphitheater of Dane Hall — the one lecture room of the School — and opened their strange new pamphlets, reports bereft of their only useful part, the head-notes! The lecturer opened his.

"'Mr. Fox, will you state the facts in the case of Payne *v.* Cave?'

"Mr. Fox did his best with the facts of the case.

"'Mr. Rawle, will you give the plaintiff's argument?'

"Mr. Rawle gave what he could of the plaintiff's argument.

"Mr. Adams, do you agree with that?'

"And the case-system of teaching law had begun. . . .

"Consider the man's courage. . . . Langdell was experimenting in darkness absolute save for his own mental illumination. He had no prestige, no assistants, no precedents, the slenderest of apparatus, and for the most part an uncompromising *corpus vile*. He was the David facing a complacent Goliath of unshaken legal tradition, reinforced by social and literary prejudice. His attempts were met with the open hostility, if not of the other instructors, certainly of the bulk of the students. His first lectures were followed by impromptu indignation meetings. — 'What do we care whether Myers agrees with the case, or what Fessenden thinks of the dissenting opinion? What we want to know is: "What's the law?" ' "

A controversy at once sprang up as the efficacy of this method of instruction. To most of the students, as well as to Langdell's colleagues, it was abomination. The students cut his lectures; only a few remained. But these few were the seed of the new School. They included several men who afterwards attained national reputation: James Barr Ames, his greatest pupil and successor, Franklin G. Fessenden, member of the Superior Court of Massachusetts, Austen G. Fox, a leader of the New York bar, Edward Q. Keasbey, of New Jersey, James J. Myers, speaker of the Massachusetts House of Representatives and one of the leaders of the Boston bar, and Francis Rawle of Philadelphia, a president of the American Bar Association. Working out his cases with these enthusiastic young men, patiently and thoroughly as he always worked, Langdell did nothing to force upon others the acceptance of his system. In a few years Ames was appointed to the Faculty, and brought youth, fire, virility, into the contest; but for many years the two were alone in their use of the new method. It was ten years before others acceded to it.

Finally, all of Langdell's colleagues adopted his invention, and Thayer and Gray became its chief public defenders. Keener carried it to Columbia, Wambaugh to Iowa, Wigmore to Northwestern; the number of students at Harvard greatly increased; distinguished English lawyers approved it; the students trained under it gained notable success at the bar. Long before Langdell's retirement as Dean the case for his system was won.

But though Langdell's system was eventually accepted by all his colleagues, their methods of using it were entirely different. Langdell himself was not a born teacher. The course of his thought was too deliberate and ponderous; he relied too entirely upon intellectual process to reach all classes of students. He possessed in high development the historical sense and the logical faculty. His collection of cases included all important cases upon each topic, beginning with Tudor times; and in class he went carefully through each case, taking up every point presented and extracting every possible legal principle from the case. His method was that of Coke; and in these modern days it was criticised as slow and as ill-arranged. He certainly covered little ground. As he grew older, his eyesight failed, and he was forced to rely entirely on lectures for conveying instruction; and many students found even greater difficulty in making much of his courses. But for the better men his was a wonderful training in close legal thought, in precision and breadth of statement, in remorseless logic.

Those whose ideas of the "case system" of instruction were self-constructed thought this a departure from the system. As a matter of fact, any method of teaching is entirely consistent with that system; for, as James Thayer has shown, it is, more exactly, a system of study rather than of teaching. Its chief thesis is that the student in preparing for a lecture should study cases, rather than the conclusions which others have derived from

the cases; *petere fontes* is its motto. Having prepared himself for a lecture by such study, the student may then, consistently with the application of the system, receive help from the teacher in any way in which the teacher is able to give it.

That development of the Langdell system which was finally adopted as the best method was the invention of Ames; or, perhaps more accurately, he perfected it and adapted it to use in teaching law. Ames as a teacher had the good qualities which Langdell lacked. His mind was broadly trained, full, and ready, and moved rapidly enough to keep the interest of the class alive. His logical sense was under control, and could bend to political or social necessity; he was a thoroughly trained historian, but he used his historical knowledge only as a means of judging the law of the present and the future. He was intensely alive to the problems of the day, concerned for justice rather than for precedent, though insistent on reaching his results by legal principles; forceful in presentation, patient in argument, convincing in his conclusions. The Socratic method of teaching, with him, was neither a club nor a rapier. Like Socrates himself, he desired to open the eyes of his students and let them discover the truth for themselves. He would rather state a problem than a solution. His favorite device in teaching was to put one good student against another, that the class might learn the law from their argument.

Almost without exception, Ames' pupils enthusiastically admired his method. It was a stimulus to the slow pupils and a delight to the more acute. But it was as a man that he won the affections of younger men. He was a born leader; and his high ideals of professional honor and of justice influenced profoundly, through his pupils, the whole American bar.

James Bradley Thayer was essentially a scholar.

Some one has said that he might as well have been a professor of English or of the Classics as of law; and indeed, anything he undertook must have been done with the same finished scholarship which he showed in law. Langdell was a lawyer turned scholar; Thayer a scholar turned lawyer. As a teacher, he now and then fell a little short, by reason of the very excellences of his mind. He saw too keenly considerations on both sides of a question to teach dogmatically, and the thoroughness of his investigations led him to suspend judgment. The average man was sometimes bewildered by his discriminations and cautious hesitation. In his earlier days he would give out and expect his pupils to read a chapter in a treatise, and then, assuming that the author's views had been mastered, he would distinguish, or doubt, or deny — deliver "a commentary on an undelivered lecture," as was wittily said. Later he prepared case books, and conformed more to the methods of his colleagues, but always he was the delight of the better men. His fine mind, his delicious shades of thought, his gentle strength, his elegant scholarship, were the admiration and the despair of the pupils he cared most to influence. And while not every pupil understood him, all loved him.

John Chipman Gray was a "rock of trust," in Ezra Thayer's inspired phrase. He was a successful teacher, first of all because his words carried conviction. He was a clear and elegant lecturer, and in his early years he lectured exclusively. He gave out four or five cases, or other authorities, each day, to be read by his class; but he seldom considered them at length. The first five or ten minutes of each lecture were devoted to a masterly summary of the preceding lecture, the remainder of the time to the new matter. His lectures were in perfect form, clear, full, convincing; each was a literary masterpiece. Later, after he had adopted the case system, he had less opportunity to display his distinctive

skill as a lecturer, but remained a remarkable and successful teacher under the new method.

No further appointment was made to the Faculty until the year 1879–80, when Henry Howland of the Boston bar was appointed Instructor in Torts, an office which he held during four successive years. In 1882–83 Professor Thayer's sabbatical year of absence made four additional instructors necessary: for Evidence, Louis Dembitz Brandeis, now Associate Justice of the Supreme Court of the United States; for Criminal Law, Franklin Goodridge Fessenden, later Justice of the Superior Court of Massachusetts; for Constitutional Law, Brooks Adams, now Professor in the Law School of Boston University; and for Sales, Charles Maynard Barnes, of the Boston bar.

The test of the new régime came in the years between 1876 and 1886. The country was passing through a period of financial stress, and more young men than usual had to earn a living instead of devoting time to study. As Langdell's reforms all went into effect they cut down the number of students, both by keeping out unqualified persons and also by repelling many who feared to face the higher standard. The competition of the Boston University Law School seriously lessened the number of graduates of Harvard College entering the Law School. This decrease in students made the financial position of the School precarious. The first light came in 1882 with the endowment of a new professorship, afterwards named for its donor, William F. Weld. To this chair was appointed Oliver Wendell Holmes, Jr., now Associate Justice of the Supreme Court of the United States. Though his actual service lasted only a few months, his enthusiastic scholarship and magnetic personal qualities were of a distinct help to the School, and in subsequent years his loyal support has never failed. In the same year, 1882, a considerable amount of money

was raised as a book fund, and Austin Hall was presented to the School. These three gifts, coming at a time of depression, served to fix the financial condition of the School on a firm basis. The courage of the Faculty and their belief in the final triumph of their progressive measures had never wavered, and the rapid growth of the School in numbers and influence, which began with the removal to the new building, was never checked.

This new building had long been necessary. The quarters in Dane Hall had been almost unbearably overcrowded, but the School had no resources upon which to draw. The old building had been unaltered since its enlargement in 1845, except that in 1871 it had been moved toward Harvard Square in order to make room for Matthews Hall, and in the process had lost its Ionic colonnade. President Eliot had often mentioned the need of new quarters to the Corporation, and now they were able to supply this need through the desire of Mr. Edward Austin, a merchant of Boston, to erect a memorial to his brother, Samuel. Mr. Austin offered to give $100,000 for the purpose, and H. H. Richardson, then the leading American architect, was asked to make designs. When the plans were submitted to contractors it was found that the cost would be $135,000, but Mr. Austin increased his gift to that amount; and in fact the actual cost greatly exceeded this estimate. The building when completed proved to be one of the most beautiful of its time, and well adapted, upon the whole, for a school of four hundred students and a library of forty thousand volumes. The activities of the School at once expanded, and there can be no doubt that better work was done in the adequate new quarters than could have been accomplished in old Dane Hall.

Upon Justice Holmes' resignation in 1883, William A. Keener was appointed Assistant Professor, and subsequently Story Professor. Keener was a teaching genius.

Not a scholar, nor well loved like his colleagues, he had a most remarkable ability to instruct by the Socratic method. His method differed greatly from Ames'. Ames led; he drove. Ames aimed to persuade; Keener to convince even against the will. His favorite form of argument was the *reductio ad absurdum;* and he had wonderful skill in detecting imperfect reasoning.

In the year 1886–87 the Faculty increased the amount of instruction, and for this purpose appointed three instructors: Henry Warren Torrey, who was for many years McLain Professor of History in Harvard College, delivered a course of lectures on International Law during this academic year; Joseph Bangs Warner, of the Boston bar, had charge of the course on Constitutional Law; William Schofield, later Justice of the Superior Court of Massachusetts, continued to teach Torts for the next four years.

1886–87 may be fixed as the year in which the increasing success of the School became marked. In the autumn of 1886 was celebrated the 250th anniversary of the founding of Harvard University. At the same time a number of graduates of the Law School conceived and carried out the plan of establishing the Harvard Law School Association, to which all former pupils of the School should be eligible, and which should undertake the work of increasing the success and usefulness of the School. A dinner was held, at which the speakers included Langdell, Eliot, James C. Carter, Judge Hoar, and Judge Sewall, a member of the first class in the School. A public address was delivered by Judge Oliver Wendell Holmes. Both the oration and the speeches were in the highest degree brilliant and enthusiastic; and this public commendation of the School and its work was of great value in attracting students. The Association became very useful in assisting graduates of the School to enter practice in leading law offices. It stimulated the loyalty of former pupils,

and led to an immediate increase in numbers and national influence. In Langdell's words, "The School awakened to the fact that its old students are its natural friends and supporters."

In this same year the students in the School founded the *Harvard Law Review*, a legal periodical of scholarly aims, which has since that time occupied high rank and has been frequently quoted by courts of last resort. Among the Board of Editors of the first volume were Julian W. Mack and Edward T. Sanford, afterwards judges of the Federal courts, and Joseph H. Beale, Homer H. Johnson, Blewett Lee, John H. Wigmore, and Samuel Williston, later professors at Harvard or other law schools. The new periodical received the hearty support of the Faculty, and particularly of Professor Ames, who contributed the opening article, gave his constant supervision and advice, and became chairman of its Board of Trustees when such a Board was made necessary by its increasing prosperity.

For three years, beginning with 1888–89, Herman White Chaplin was Lecturer on Criminal Law. He was a member of the Boston bar and author of a volume of short stories of singular charm.

On March 10, 1890, Professor Keener resigned his position to accept a professorship in the Columbia Law School. From the point of view of Harvard Law School this was a matter for deep regret; for Keener's ability as a teacher was of the highest character. The students vainly endeavored, through the *Law Review*, and by a general petition, to keep him at the School. From the point of view of legal education in general, however, Keener's acceptance of a professorship and subsequently the deanship at Columbia Law School is an event of striking importance. His introduction at Columbia of the Langdell system of instruction caused the secession of some of the older teachers and the formation of a private law

school for the pecuniary gain of the teachers. The resulting comparison of a school for private gain on the one side, and a school striving for higher scholarship on the other, set sharply before the American bar the alternatives of mere bread and butter education and of legal scholarship. The importance and the geographical situation of the Columbia Law School brought this question into national prominence more than ever, and Keener's work there went very far toward bringing the Langdell system into national use.

The vacancy in the Story Professorship was filled by the appointment of Jeremiah Smith, a graduate of the Law School in 1861, and formerly a member of the Supreme Court of New Hampshire, who continued to hold this chair until his resignation in 1910. At the same time Samuel Williston, a recent graduate, who had been practicing in Boston, became Assistant Professor. He was made Professor of Law in 1895, and an incumbent of the Weld Professorship in 1903.

In the year 1892–93 the division of the first year class into two sections made two further additions to the Faculty desirable. Eugene Wambaugh, a graduate of the School in 1880, who had been teaching in the University of Iowa, and had just formed as Dean a new law school at Western Reserve University, was appointed Professor of Law. In 1903 he became the first Langdell Professor. Joseph Henry Beale, of the Class of 1887, who had given a few lectures on Damages in the year 1890–91, and been appointed Lecturer on Criminal Law and Carriers the following year, became Assistant Professor of Law in 1892. He was made Professor in 1897, and after occupying the Bussey and Carter chairs, was appointed Royall Professor in 1913.

About this time the School began to give courses in the practice of Massachusetts and New York for the benefit of students intending to settle in those states. Frank

Brewster, of the Boston bar, became the first instructor in the Peculiarities in Massachusetts Law and Practice in the year 1890–91, and continued to hold the office for five years. The first lecturer on New York Practice, 1892–93, was James Byrne, now one of the leaders of the New York bar. The press of business prevented his lecturing in the following year, although he was appointed to do so, and in his place was chosen Ernest Lee Conant, then instructor in the Common Law in Harvard College. Another innovation at this period was a course in Patent Law, which was taught by Frederick Perry Fish, a leading specialist in that subject.

The result of the division of the first year class into sections was not altogether satisfactory. Although the sections changed instructors at the end of each half year, so that every man sat under both teachers, comparisons were inevitably made by the students and one of the instructors was apt to suffer; and since attendance at recitations has always been voluntary at the School, some of the students showed their preference by attending the classes of the favorite instructor exclusively. Furthermore, a class which was not divided proved quite teachable. Therefore, the division of the first year was temporarily abandoned.

An unexpected consequence of this event was the great increase in the amount of elective courses. There are always those who deprecate an elective system in a law school on the ground that it encourages students to study comparatively useless specialties instead of the great staple courses. The answer to this objection always given at Harvard is that no one can learn at a law school the entire content of the law; that all a school can accomplish is to train the student in principles and methods, teach him how to look up a new case, and leave him to do so; and that many subjects of law offer a good medium for such training. Since the beginning every possible encourage-

ment has been given to students to select their own studies; Langdell limited this wide choice by making the course a required one for the first year, but this was because the courses required were preliminary, rather than because they were indispensable on account of their subject-matter.

The extent of election, however, was limited by the smallness of the Faculty. As late as 1890 it was possible for a student to take every course in the School, though three or four more courses were given than he could be examined in; his election was therefore confined within narrow limits. In 1886 the students petitioned for more courses; and in response the Faculty increased the number as rapidly as possible. With the abandonment of the division of classes, in 1893, a considerable additional amount of elective work was offered, and from that time there has been a large amount of real election in the second and third years of the curriculum.

The rapidly increasing resort to the School brought for the first time before the Faculty the problem of cutting down the numbers. It was obviously desirable that this cut should come in the more poorly prepared rather than the better prepared candidates. In 1891, therefore, the Faculty voted that at the end of the next year no one who was not a college graduate, whether candidate for the degree or not, should be admitted to the School without passing an examination. The next year a still higher standard was required by providing that no one who failed to pass an examination in at least three subjects would be allowed to continue in the School. The result of this legislation was to exclude from the School certain persons who desired to remain in Cambridge connected with the University, but without any wish of completing a curriculum or taking a degree. In 1893 the School took the final step by which only college graduates were eligible for the degree. The vote was passed by the

Faculty, unanimously and without hesitation, and was approved by the Corporation.

As the School grew larger and Langdell became blinder, it became increasingly difficult for him to carry on the work of the deanship; and in 1895 he resigned the office after twenty-five years of service. The statute had long since been changed, so that the appointment of his successor was made by the Corporation; but the Faculty were consulted and unanimously approved the choice of Ames. Probably either of his seniors would have been appointed if he had desired the office, but both joined in urging the appointment of the younger man.

Langdell's administrative work may be thus summarized. He found a School with no educational requirement for admission; in the last year of his deanship the requirement of a college degree was adopted. There had been no regular curriculum; a few subjects were taught yearly, and a larger number were given in alternate years. At the end of his term a complete curriculum, arranged progressively for three years, was given each year; ten hours of prescribed studies in the first year, thirty-eight hours of elective study in the second and third years (from which eighteen or twenty hours had to be chosen), and two extra courses. The course of study for the degree, if such it could be called, at the beginning of the period was a year and a half of residence, with no requirement of work to be done and no examinations; at the end three years' residence was required, and the successful passing of examinations on twenty-eight or thirty year-hours of work. He found a school of 136 students; he left one of 413. He found a library of less than ten thousand books; he left one of thirty-four thousand. He found a Faculty of three professors; at the end of his term of office there were eight members of the Faculty and two instructors. He came to a school with an endowment of less than thirty-seven thousand dollars,

struggling under the shadow of a deficit; he left office with funds of three hundred and sixty thousand dollars and a surplus of twenty-five thousand dollars. The School at his coming was housed in the small brick structure which had been its home since the time of Story; during his term of office it moved into a spacious and beautiful stone building, a worthy dwelling-place for a great school. Such work is given to few men to do. But in Langdell's case, as has been said, it was overshadowed by the even more striking success of his method of study, and the consequent change in the attitude of students toward their profession. Learned lawyers there have always been; scientific lawyers before Langdell but a few. It is hardly too much to say of him that he found the profession of law a trade, and left it a science.

The Deanship of Ames

Coincidently with the beginning of Ames' deanship, the School became a graduate school of law; that is, the only persons admitted as regular students were either graduates of approved colleges or "persons qualified to enter the senior class of Harvard College." A list of approved colleges was published in the catalogue, with the proviso, however, that it was "not intended to be exhaustive, and will doubtless be enlarged from time to time."

It is hardly possible to-day, when the law school which is open only to college graduates is common, and the profession has accepted a college education as a desirable prerequisite for a student of law, to think back and imagine the boldness of the step taken by the Faculty in making the new requirement. It is true that a large percentage of college graduates had always been in attendance; and at the time the rule was adopted over two-thirds of the students were college graduates, besides a considerable number "qualified to enter the senior class of Harvard College." But the Faculty could not know

that the number of college graduates resorting to the School would be much increased. They hoped that eventually the School would not lose; but they faced an almost certain falling off in numbers by one-third. When one remembers that the School was dependent upon the receipt of tuition fees even for the payment of salaries, the boldness of the step is evident.

The result, however, falsified all expectation. A school made up almost altogether of college graduates proved exceedingly attractive to college graduates; they preferred it greatly to a school where they were taught together with a considerable proportion of less well-trained young men. The change did not even check the growth of the School. There was, to be sure, a slight falling-off for a year; but this was due to the artificial increase in numbers for the year preceding the change, caused by non-graduates who took advantage of their last opportunity to enter as regular students. The example of Harvard was soon followed by many others of the better schools. But Harvard had all the advantage of priority. College graduates having begun to resort to the school where they would be associated with their own kind, this attraction has continued and increased; and it may fairly be said that the action of the Faculty in 1893, taken under the leadership of Langdell and Ames, has made possible the School of the present and the future.

This serious increase in the requirements for admission was not carried out without considerable opposition, especially from other schools and from lawyers in all parts of the country. The example of Abraham Lincoln, who without any schooling whatever had made himself a successful lawyer, has served to fortify ten thousand arguments against the step. Harvard was at first attacked not merely as exclusive, but also as asserting the obvious untruth that only college graduates were fitted for the practice of law. Such an assertion was very far

from the minds of the Faculty. There were a hundred schools of law in the country where persons who had not received a college education could be trained. It was believed that Harvard could do better work by becoming an exceptional school in which only college graduates should be trained, leaving to the other schools the task in which they were already engaged, of training in one class men of various degrees of education. It was the belief of the Harvard Faculty, a belief which experience has fully justified, that better work could be done under the Langdell system of instruction by teaching a homogeneous body of men, that is, men whose mental training was similar, and whose intellectual experience fitted them to apprehend instruction adapted for their degree of education. The increasing numbers taught at Harvard have brought with them great pedagogical difficulty; it would have been impossible to carry on such large classes if the students had not already such an amount of education as made them unusually responsive to new ideas.

Nevertheless, the Lincoln legend affected the regulations of 1893. In order that the non-graduate should not be entirely excluded from membership in the School, provision was made for admitting as special students persons of mature age whose natural ability and experience in the world might be supposed to compensate for the lack of academic training. The Faculty has always kept in mind the fact that some of the ablest graduates in the history of the School never received an academic degree. It was provided that special students who obtained a grade of B might receive the degree. This action has been greatly misunderstood by those who have not known the history of it. The theory of the Faculty was that the degree in law should be a guarantee of a certain quality of mind in the recipient of it. It was intended to mean not merely that the holder of it had a required modicum of legal knowledge, but that he had such ability

to enter into practice of a learned and exacting profession as three years' study at the School by a person already liberally trained might be expected to give. If the degree were to mean that, the special student who received it must show in some way that his natural ability and experience in life were such as to make up for the lack of a set college education. The Faculty believed that a special student who received a grade of B in competition with college graduates had sufficiently proved himself to have such ability and experience. No mere test of a written examination can certify to the acquirements of those who barely succeed in passing it; for such men the examination test must be supplemented by such previous educational history as will form an additional guarantee of quality. The special students, therefore, who on the examination test did not show remarkable excellence, could not be guaranteed as possessing the desired quality. Those, however, who placed themselves in the upper quarter of the class were felt to have proved themselves fit for the degree. To many persons it has seemed hard that special students who, with all their disadvantages, succeeded in passing their examinations should not receive the degree; the explanation just given will at least indicate the reason of the Faculty in passing the rule.

While the rule admitting special students to the degree was thus in its origin a slight modification of what was generally regarded as a very rigorous practice, the experiment on which Harvard thus entered proved so quickly successful and so soon became the generally accepted standard, that within fifteen years Harvard was reproached for not really being a graduate school, because it offered the degree to persons not college graduates. And indeed the rule was one which, if administered laxly, might seriously have diminished the prestige of the School. The best answer to the criticism lies in the actual practice. In the fifteen years from 1896–1910

there were admitted to the School 3488 students. Of this number 49 or 1.1 per cent were persons without a degree. Only figures like this can prove that the Faculty were really maintaining a graduate school. These persons did not, in fact, prove themselves to be of high quality. Of the 49 admitted only 9 have ever received the degree. The meagreness of their numbers and their moderate intellectual ability finally led the Faculty to withdraw the offer of a degree to special students.

The provision for the admission of persons qualified to enter the senior class of Harvard College was originally adopted as a measure of attainment to be required of men who, without having received a college degree, claimed to be of equivalent education. As it worked out, however, the provision made it possible for Harvard seniors to enter the School without obtaining the degree; and a practice grew up for seniors who had almost completed their college requirements to obtain leave of absence from the College and enter the Law School, where they attempted to do the first year work of the School together with the college courses which were lacking for the degree in Arts. Since the discipline in the Law School was much freer than that in college, a considerable number of men of this type entered the School, though they had no intention of ever becoming lawyers; and even those who were genuine law students were greatly handicapped by the necessity of taking college as well as law school work, and the natural diversion of their energies to the social activities of seniors in college. Statistics compiled after several years' experience of the working of the rule proved that Harvard College seniors, so admitted, were not doing well in the Law School; and in 1900 the privilege was withdrawn. Since that time no persons who have not already received a college degree can be admitted as regular students unless they have completed all the required college work, so that only the mere

lapse of time stands between the student and the degree.

The publication of the list of approved colleges proved a continual source of friction with colleges which did not find a place on the list, and sometimes became an undue cause for boasting by those which had been admitted to it. The Faculty came to feel that since they were not in a position to stand as public censors of college education, the publication of the list of colleges approved by them was unwise, and it was accordingly discontinued.

The number of temporary teaching appointments during the deanship of Ames was far greater than for any previous period, partly because of the increasing enrichment of the curriculum. Valuable work was performed by the following men, whose professional careers deserve fuller mention in another portion of this book, — George Rublee and Henry Walton Swift, who took some of Professor Williston's courses during his illness; Francis Cleaveland Huntington, Frank Beverly Williams, Harvey Humphrey Baker, Charles Benjamin Barnes, Arthur Charles Rounds, Robert Gray Dodge, James Jackson Storrow, Harry Augustus Bigelow, William Rodman Peabody, Joseph Lewis Stackpole, Jr., Rufus William Sprague, Frederick Green, Wallace Brett Donham, Samuel Hudson Hollis, Clarence Harmon Olson, Jeremiah Smith, Jr., Allen Reuben Campbell, Philip Lee Miller, Sanford Henry Eisner Freund, Arthur Atwood Ballantine, Lincoln Frederick Schaub, and John Gorham Palfrey.

Two other instructors afterwards became more closely connected with the School. Ezra Ripley Thayer was appointed Instructor on Massachusetts Practice in 1897–98, when the plan was adopted of offering the two Practice courses in alternate years, and taught four times, until press of business compelled him to decline further appointment. Edward Brinley Adams was Lecturer on Property in 1902–03.

Charles Frederick Dutch began a long and useful service as instructor in the year 1906. During the next ten years he taught at various times Admiralty, Equity and Property. Mr. Dutch's work for the Law School in hours taken from a busy practice deserves the gratitude of every one interested in the School, and his success in conducting difficult courses in emergencies is worthy of the highest praise.

In the year 1902–03 lectures were given for the first time on Mining and Irrigation. The lecturer in that year and again in 1905–06 was Charles James Hughes, Jr., the chief mining lawyer in Colorado. The course on Mining Law was subsequently conducted by Bancroft Gherardi Davis of the Boston bar.

Several distinguished foreigners taught at the School during this period. In 1898–99 Alfred Venn Dicey, Vinerian Professor at Oxford University, delivered lectures afterwards published under the title "Law and Opinion in the Nineteenth Century." In 1906–07 Paul Vinogradoff, also Vinerian Professor of Law at Oxford, gave a course on Comparative Ancient Law. Walter Neitzel, a German judge, who was studying American law in Cambridge, conducted an interesting series of lectures in 1908 on the German Civil Code.

As the School grew, several permanent professors were added to the group of men who had surrounded Langdell. In the year 1878 George Bemis of the class of 1839 had left a considerable sum of money to the Law School for a chair of Public and International Law. This bequest was subject to a life estate which fell in about 1895. The first appointment to the Bemis Professorship was that of Edward Henry Strobel in 1898. In this same year the Faculty again decided to try the experiment of dividing the first year men, but only in one course. Criminal Law was to be taught in several sections, so that the students might have the advantage of a small class at the beginning of their school work.

In order to help carry out this division Jens Iverson Westengard, who had just graduated, was made instructor in Criminal Law for 1898–99, and next year Assistant Professor of Law. In 1906 Professor Strobel became General Adviser to the King of Siam and departed for the East, taking Professor Westengard with him. When Mr. Strobel died in 1908, Mr. Westengard succeeded him as Adviser, and remained in Siam until 1915. He then returned to the Law School to take the Bemis Professorship, which had been vacant since Strobel's resignation. Joseph Doddridge Brannan, who had graduated from the School in 1872 and practiced and taught in Cincinnati, became Professor of Law in 1898. Ten years later he was made Bussey Professor and retired in 1916 after eighteen years of service. Bruce Wyman was appointed Lecturer on Administrative Law upon his graduation in 1900, and three years later Assistant Professor. In 1908 he became Professor and served until his resignation in 1913. Edward Henry Warren, a member of the class of 1900 in the School, was appointed Assistant Professor in 1904, Professor in 1908, and in 1913 Story Professor. Joseph Warren, of the same class, served as Lecturer and Instructor from 1909 to 1913, and was then appointed Professor of Law.

At the time of the Spanish War the question was raised, for the first time in the School since an examination for the degree had been established, of a necessary concession to students engaged in military service. The Faculty felt that the gravity of the occasion justified a relaxation of their very rigid requirements as to examination, and they accordingly adopted regulations substantially excusing all students who were absent on actual service from taking examinations held during their absence. During the riots in Lawrence in 1913 a similar privilege was granted to several students who were called out as members of the Massachusetts militia.

A petition for the admission of a woman to the School was presented in June, 1899. After a long discussion the Faculty voted that if the governing boards of Radcliffe College would admit her as a graduate student, the faculty would allow her to take the courses and examinations. It may be added that Langdell dissented from this vote. Thayer expressed the view of all the others when he said that he should regret the presence of a woman in his classes, because he feared it might affect the excellence of the work done; but he could not deny the inherent justice of the claim. The Radcliffe College council were ready to admit the petitioner in accordance with this vote, but the Harvard Corporation, acting as overseers of Radcliffe College, refused their assent.

By 1899 the School had become so large that a Secretary was desirable. Charles F. D. Belden was appointed, and the position was later occupied by Frederic Louis Fischer and Herman Arthur Fischer. In 1909 Richard Ames became Secretary. Besides having charge like his predecessors of work connected with the entrance of students and their standing in the School, Mr. Ames has also undertaken to assist men who are graduating to secure positions in law offices.

The students of the School have seldom cared to take a large part in athletic activities. Indeed, most of the students so suddenly give up the active exercise of their undergraduate years as to present not infrequently a problem of health. But persons who had been prominent on the athletic teams of their colleges before coming to the Law School were sometimes commandeered for service on the Harvard teams. The Faculty of the Law School regarded this as unfortunate. A professional school is a place for work, not for play, and the interruption to work caused by membership on an athletic team was so considerable as distinctly to interfere with the professional progress of the student. In 1904 the Faculty

requested the "Dean to communicate to the Committee on the Regulation of Athletic Sports the opinion of the Faculty that it is desirable to restrict the participation by Harvard students in intercollegiate athletic contests to the undergraduates of Harvard College and the Lawrence Scientific School." The Athletic Committee acted in accordance with this opinion and from that time the students in the School have taken no part in the regular contests of Harvard teams. Now and then they have formed football or baseball teams to play a game or two, and considerable enjoyment has been obtained in that way; but they have not been permitted to enter intercollegiate sports.

When Austin Hall was occupied, in 1883, it was expected to furnish an adequate home for the School for the ensuing fifty years, as Dane Hall had done for the previous half century. The whole past experience of the School justified this expectation. During the forty years from the death of Story to the year 1885 the maximum attendance of students had increased but fifty; but in the following twenty years a sudden and unexampled increase in numbers took place. From 165 in 1885 the attendance rose, with hardly a year's check, to 765 in 1904; a difference of 600, or 364%. The library grew at an almost equal rate. As early as the year 1896 alterations were made by which the accommodations of the School were increased. Before 1902 plans had been made for the enlargement of Austin Hall by adding a stack and professors' rooms at the north end; but the increasing cost of building caused the abandonment of the plans. Within a year the necessity for larger quarters became even more pressing. Many schemes for enlargement of the building were proposed, but all had to be abandoned because of artistic or financial objections. The condition upon which Austin Hall had been given — that no building should be placed within sixty feet of it — made the construction of a

second building a difficult problem; but that course was finally adopted, and Langdell Hall was begun in 1905.

No benefactor came forward to present the new building. Fortunately the prosperity of the School had been so great that several hundred thousand dollars had been accumulated as surplus, and this was devoted to construction. Langdell Hall cost, with its furnishings, considerably more than four hundred thousand dollars. Financially, therefore, it caused an increased expense to the School of the interest on this money as well as of the cost of maintenance of the new building. It happened that the University adopted at the same time the reasonable policy of distributing among its departments the general expenses — for overhead charges, library and gymnasium, etc. — which had formerly been borne by the College alone. In consequence of these new financial burdens, the average annual surplus of the School, which had been more than thirty-eight thousand dollars ($38,548.53) for the period between 1900–01 and 1904–05, fell to less than three thousand five hundred dollars ($3435.47) for the period from 1907–08 to 1911–12; or, if allowance is made for certain extraordinary expenditures for books, seven thousand five hundred dollars. There was therefore a loss to the School from these causes of more than thirty thousand dollars a year; a serious matter for an institution so slightly endowed.

In October, 1906, the Faculty began to consider the extension of the school work by the addition of a fourth year of residence. For several years one or two students had stayed after graduation for another year's work in the School. The number of courses offered was greater than could possibly be taken by a student even in four years, and several subjects of a distinctly advanced nature were already offered. After three years of informal discussion the Faculty voted in 1909 to recommend to the Corporation that the degree of S.J.D. (Doctor of

Juridical Science) be given to a graduate of the School who should successfully complete one year of postgraduate work, and to graduates of other schools after two years of such work. The Corporation and the Overseers approved the plan, but modified it by requiring only one year's residence for the degree whether the student had graduated from Harvard or elsewhere. It was provided that the candidate for S.J.D. should have received the LL.B. degree with high rank, and must pass the examinations of the fourth year course with distinguished excellence.

The sudden illness and untimely death of Ames early in the academic year 1909–10 put an abrupt end to the period under examination. Judge Smith, who in 1908, at the unanimous and insistent request of his colleagues, had agreed to serve for two years longer in his professorship, insisted upon retiring at the end of the year. Gray alone remained of the group of great teachers who, under the leadership of Langdell, had created the prestige of the School. The fortunes of the School were now in the hands of younger men, all of them pupils of Langdell and his successors; and the task of supplying the place of such distinguished teachers as Ames and Judge Smith was exceedingly serious. Professor Williston, whose connection with the School had been longer than that of anyone except Gray and who served as Acting Dean till the close of the academic year, would undoubtedly have received the deanship, had not the condition of his health compelled him to decline. The Faculty and the Corporation next turned to a distinguished member of the Boston bar, one of the most brilliant students in the history of the School, who had already made his mark there as a teacher of Massachusetts Practice. Ezra Ripley Thayer was chosen Dean, and Roscoe Pound, then at the University of Chicago, was elected to fill the vacant Story Professorship.

In the autumn of 1910 Ezra Ripley Thayer entered upon the duties of the deanship. During the half-year of interregnum the Faculty had made several appointments to teaching positions. Upon Dean Ames' illness in 1909, Austin Wakeman Scott, a graduate of that year, was called from practice in New York to be Instructor in Pleading and Equity. The next year he became Assistant Professor and in 1914 Professor of Law. Roland Gray was appointed Lecturer on Property for 1910–11 and twice reappointed.

**The Deanship of Thayer**

New problems awaited solution. The establishment of a graduate course and of a graduate degree of Doctor of Juridical Science put upon the Faculty the task of developing instruction in a new line of legal thought. The leadership of the School up to this time had been in methods of undergraduate instruction and in the training of youth for service at the bar; it soon appeared that the School was to be pioneer in another field, that is, in the broad and theoretical training of teachers in the science of the law. It was not expected that many students would come to the School to obtain the higher degree; nor was it foreseen to how great an extent these few students would consist of experienced teachers of law desirous of keeping abreast with the latest developments of legal science. As an essential part of their work these men have been employed in the investigation of current problems of law and administration. The remarkable library of the School has thus been made of direct use to the development of learning. And during Thayer's administration the distinction already possessed by the library was increased by the acquisition of several valuable collections of books on special subjects. A full description of these accessions will be found in another chapter. It is, however, proper to notice them here, because they have led distinguished scholars in several branches of law and administration

to resort to the School, and have in this way broadened its influence.

During Thayer's deanship, also, the organization of student life was greatly increased. Two dining clubs were either started or became established; the Legal Aid Bureau began its work. In the spring of 1910 the Faculty had established a Board of Student Advisers, drawn from the third year class, whose duties were to help beginners in the use of books and the preparation of briefs for the discussion in club courts. This board became a most valued instrument for the exchange of ideas between Faculty and students, and furthermore greatly increased the interest in the work of the club courts. With the interest of a fund given by Mrs. Ames to be used at the discretion of the Faculty, a prize competition for the club courts was established and the advisers were entrusted with the administration of this contest. Dean Thayer was greatly interested in its success, attended many of the arguments, aided in the selection of judges, and at all times kept in close touch with its progress.

Thayer entered heart and soul into the work of the deanship which, to him, as to Ames, meant placing himself at every moment at the service of students who were in any kind of trouble or difficulty. To this work he devoted a considerable proportion of his time and thought during the five years of his administration. For instance, he gave an afternoon each week to visiting law students confined to the infirmary.

In 1911 Assistant Professor Scott was offered the deanship of the University of Iowa Law School. He was encouraged by his colleagues to go there for a year in order to establish the system which had been introduced by Professor Wambaugh more than twenty years before. Professor Scott accordingly went to Iowa and performed valued service there, thus repeating the experiment tried nine years before when Professor Beale organized the

Law School of the University of Chicago. Besides the work of this character performed by Harvard Law School professors, a large number of graduates of the School have spread the case system into law schools all over the United States. Langdell's ideas and standards of scholarship have remained no exclusive possession of Harvard, but have influenced thousands of lawyers who never saw Cambridge or even heard his name.

To fill Professor Scott's place in part during the year 1911–12, Warren Abner Seavey was appointed Lecturer on Pleading. Other temporary appointments during Thayer's deanship were Odin Barnes Roberts to lecture upon Patents and Lucius Ward Bannister upon Water Rights.

Two permanent appointments were made in 1913–14. When John Himes Arnold retired in September, 1913, and became Librarian Emeritus, his place as Librarian of the Law School was filled by Edward Brinley Adams, then in charge of the Social Law Library in Boston. On January 12, 1914, Felix Frankfurter, Counsellor for the Bureau of Insular Affairs in Washington, was appointed Professor of Law.

Early in 1915 Thayer was attacked by an obscure disease, which not only incapacitated him from work during most of the spring, but resulted in nervous depression of a serious character. He returned to work before the end of the year and conducted examinations in his course, but the strain of the work and the recurrence of his disease resulted in a complete breakdown and in his sudden and lamented death. His service to the School cannot be measured by the shortness of his office. Like Langdell, he became Dean at a time of sudden change and development; and though he was not destined like his predecessor to see the success of the movement whose beginning he cherished, he powerfully assisted in giving it direction.

In order to conduct the administrative work of the School until the choice of a dean, Professor Scott, whose late experience in Iowa was now of service to the School, was made Acting Dean. A considerable amount of administrative work was assumed by the Secretary, thus lightening the task of the Dean. Professor Thayer's course on Evidence was taken by Arthur Dehon Hill, who was formerly district attorney for Boston, and had a broad experience in the trial of cases and especial interest in Criminal Law and Criminology. The course on Torts was taught by Chester Allen McLain, who had graduated from the Law School in 1915. For the year 1916–17 he was appointed the first incumbent of the Thayer Teaching Fellowship, which had been endowed by Mrs. Thayer after Dean Thayer's death.

During the year Professor Pound was designated as Dean; and the Faculty was strengthened by the retention of Mr. Hill as Professor of Law, and by the appointments of Albert Martin Kales, an advocate at the Chicago bar and also a teacher of law at the Law School of Northwestern University, to a professorship for the year 1916–17, and of Zechariah Chafee, Jr. of the Rhode Island bar to an assistant professorship.

It is a far cry from two small rooms in an old dwelling-house to the two imposing and monumental buildings which now house the Harvard Law School; or from the solitary student of 1817 to the eight hundred of to-day. Yet, striking as has been the material progress of the School, its intellectual development is no less surprising.

The first half century was throughout a time of experiment. The School was a pioneer in a new and difficult task, and able men devoted themselves to that task, and succeeded. But with Langdell a new order of things began. From his coming there has been an unbroken tradition of legal scholarship, and the School has been not merely a law school, but the repository of a distinc-

tive legal science; it has created its own standards of common law. This body of scientific thought, professed by the teachers and apprehended by the pupils, has come to be known, in student vernacular, as "the common law of the School." To its development Langdell brought first-hand study and logical precision; Thayer, depth of scholarship and historical insight; Ames, an ever increasing ethical and social element, and the fundamental conception of the entire law as a single thing, divided only for mere convenience into topics; Gray, the matured sanity and judgment of a man of affairs, and precision and elegance of statement; Smith, wide experience in the application of law and an illuminated common-sense which checked the excess of mere theory. Ten thousand students have contributed the energy and eagerness of youth, and knowledge of life in every part of the country. Incessant class-room discussion and argument among students out of class have wrought the fabric; and the *Law Review* has formed an organ of expression. The result has been the development of a complete and scientific conception of the common law such as no other institution or body of men has had the opportunity of creating.

# CHAPTER II

## INSTRUCTION

LEGAL education, at least so far as our civilization is concerned, has been carried on in one of four ways. The most primitive is the method of apprenticeship; the young man learns his law by sitting for many years in court, watching the administration of justice. It is thus that the traditional justice of the folk-mote recruited its ministers, in Greece and Rome as well as in ancient England. This method continued after the folk-law had been succeeded by the "judge-made" law of a professional tribunal. During the Middle Ages the students outside the bar took note of what was doing in court, and digested their notes under alphabetical headings; creating in this way one of the earliest forms of law book, the so-called Abridgment. The judges themselves condescended to notice these students, and to explain the more obscure processes of justice.

**Methods of Instruction**

After a time this haphazard system of studying law was supplemented and at last superseded by a more finished method. Some lawyer, learned in a certain subject, presented to the students in a set lecture, or in a treatise, the whole law on his particular topic. From the later Middle Ages to the present day the readers of the Inns of Court have been delivering lectures on branches of the law; and during the same period treatises have been placed before the profession for the

information of those who would learn the law. In the history of the Roman law, Justinian's Institutes form a general treatise of this sort; while in our own legal history the foundation of the Vinerian Professorship at Oxford, and its first-fruits, Blackstone's Commentaries, furnish the classic example of this method of instruction and of the lecture-treatise which it produced.

As treatises multiplied, a third method came into use; comment by the teacher on a text in the student's hands. This was the method pursued in the mediæval schools of Italy. Accursius, Bartolus, and their successors glossed or commented on the text of the *corpus juris*. The system of teaching by lectures tended toward this third method, as lecturers published their treatises, and either commented upon them afterwards themselves or provided them as material for the comment of others. From the publication of Blackstone's Commentaries to the publication of Langdell's Cases on Contracts, this was the prevailing method of legal instruction in America, and it still survives in the "textbook schools."

The fourth method trains the students in legal investigation through a first-hand study of judicial decisions and other sources, and tests by class discussion the results of this investigation.

At the Harvard Law School the last three methods have been successively tried. Stearns, Story, Ashmun, Greenleaf, and Washburn in particular, made more or less use of the lecture method; though as each printed in a treatise or treatises the result of his investigations, the usual evolution into instruction by comment took place. James Bradley Thayer lectured for many years on Constitutional Law. Gray used the lecture as a means of imparting instruction later, more aptly, and more successfully than any of his predecessors; but he finally abandoned it for the Langdell "case system." The method of comment, used by all the earlier teachers,

became in the hands of Joel Parker and Parsons the typical system. James Bradley Thayer was the latest to employ this method in undergraduate teaching; although in his later years Langdell's own method of class instruction took the form of comment on the cases, because his diminishing eyesight made the conduct of discussion impossible to him. But the greatest service of the school to the development of legal instruction has been rendered in the invention by Langdell, and the development by his successors, of the fourth method of instruction, the so-called "Langdell" or "case" method.

This is not the place, even if it might conceivably be still desirable, to explain or defend the case method of instruction. Many articles have been written in favor of the system and many attacks have been made upon it by those not familiar with its operation. The only final answer to such attacks is the success of the method in actual use, as shown by the record in practice of students trained under it. A list of such students who have attained distinction in various branches of the profession is a sufficient defence of the method. It must be granted that in order to insure its success, it must be used in a school which purports to teach the law not of a particular state, but of the entire United States; and it must be employed by professional teachers chosen, not for their skill in the practice of law or even on the bench or in writing treatises, but for legal scholarship and the ability to make men think. How the situation at Harvard has met these requirements will be presently shown. It must be admitted, furthermore, that the progress of the student in the school appears to be slower than under other systems of instruction, for the reason that the attempt is made not merely to convey information but to stimulate thought, to correct mental habits and to create in the mind of the student the mental

equipment and modes of thought of the sound lawyer. The student instructed by this system may leave school ignorant of the rules developed in important branches of law, for three years' study is too short to make a man master of every branch of a complex and rapidly growing science. He ought, however, to be so trained that he will never be at a loss to find the required law and apply it to facts set before him, and this, after all, is the essential task of every lawyer in every branch of the profession. The perfection of technique in teaching which has been progressing at the Harvard Law School since 1870 has made it possible to instruct in a most difficult science classes of students of a size undreamed of, even a generation ago, and to give them such mastery of that science that they are at once prepared to cope with the greatest lawyers at the bar in the discussion of all questions involving intellectual knowledge of the law. This extraordinary result could only be attained by the use of a scientific system of instruction employed by professional teachers in the teaching of an already highly educated student body.

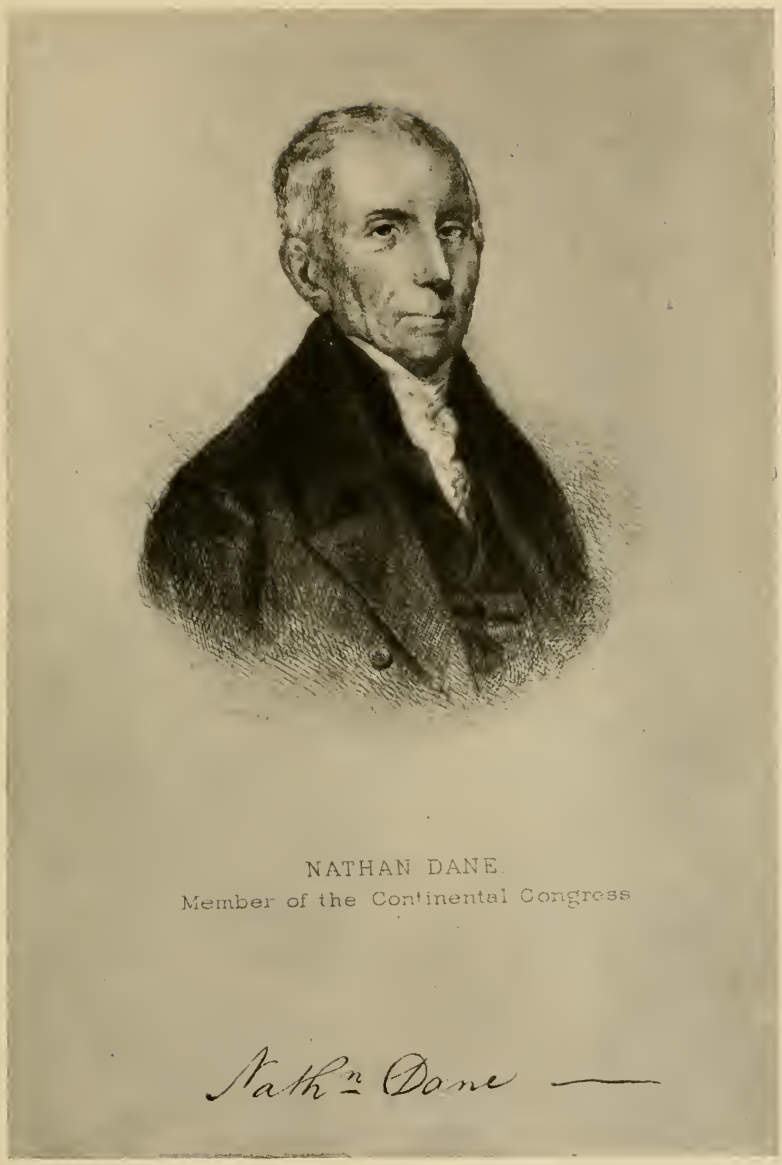
A characteristic quality of the Law School from the beginning of its history to the present time is its cosmopolitan character. In the first five years of its history, out of forty-one students, less than one-half were from Massachusetts; they came from eight states, including Maryland, Virginia, and South Carolina, and from seven colleges.

Cosmopolitanism

This fact, no doubt had its bearing on the character of the law taught in the School. It had been the custom to teach in an office to a few students the law of a particular state; and though in each state a few English law books were found, all the knowledge that supplemented these books was knowledge gained at a particular bar, or out of the few reports of the state which might previ-

ously have been published. There were in 1817 over one hundred volumes of American reports accessible to lawyers; and at least one-half as many in 1812. Yet a set of lectures delivered in 1812–13, at the Litchfield Law School, full of references to English books, contains a very few references to Connecticut Reports, and none or almost none to those of any other state. Such a course could hardly have been possible at Harvard, where the majority of students were not intending to practice in Massachusetts. Stearns' Real Property, published in 1824, which was no doubt a transcript of his lectures, contains numerous references to the reports of the various states. An examination of five pages, taken at random, shows three citations of reported cases from New York, and one each from Massachusetts, Pennsylvania, Maryland, Virginia, South Carolina, the Supreme Court of the United States, and England.

Meanwhile the Supreme Court of the United States had been building up a jurisprudence which was identical throughout the country. The "law of nature" (which meant the general reasoning of common-law lawyers), international law, commercial and maritime law, Federal law and Federal equity, "formed a common element of law in all the states." Instead of the common law of England, a common law of America was forming and the consciousness that their law was after all identical in its principal features was taking possession of the bars of all the states. When Dane founded a professorship for a member of that Supreme Court which was the greatest agency in this new fellowship, he provided that the professor should teach no particular law but rather that which was common to America. "Branches of law and equity," he stipulated, "the most important and the most national, that is, as much as may be, branches the same in other states of the Union as in this; making lectures on this state law useful in more states than one; law clearly




NATHAN DANE

A member of the Continental Congress, the draftsman of the Ordinance of 1787 for the government of the Northwest Territory, author of Dane's "Abridgement," the profits of which he devoted to the Harvard Law School in 1828 in order to establish the School with Joseph Story at its head. (*From an old print.*)

distinguished from that state law which is in force and of use in a single state only."

Since Dane's time his principle has been strictly carried out. Through all changes of method and of policy, the School has held fast to the teaching of the general common law. Other schools have claimed to be better adapted to train lawyers for the bar of a particular state because they taught the local law and practice of that state; but they have either disappeared or changed their policy. The insistence of Harvard that the best training for a lawyer is a study of the common law as a scientific system, and that the study of a particular law only tends to make narrow and unenlightened practitioners, seems to be established in the Supreme Court of Experience. The effect of this policy, accepted as it has been sooner or later by most other schools, upon the body of American law, is incalculable. When the best-trained lawyers at the bar have been taught to think of the fundamental law as the same throughout the country, and to regard the decisions of all common-law courts as of persuasive authority, the result has been a strong tendency to unity in the particular laws of most states, counteracting the centrifugal forces which if left to themselves would have split the country into fifty distinct kinds of law. The victory over separatism, though assured in most law schools, is by no means won in the courts; but the growing emphasis on uniform legislation and uniform construction of such legislation and the realization of the waste, delay, and confusion caused by a multitude of conflicting decisions on the same question in the same nation, point to an eventual fulfilment of Story's desire for the prevalence of general principles of commercial law throughout the United States.

Dane expressed the belief that the best teachers of law would be judges or lawyers in practice, and he showed

his confidence in this view by procuring the appointment of Judge Story. This was an extremely happy choice for securing the establishment of the Law School; but Story himself continually lamented that his teaching suffered because of the length of time he was obliged to spend in his judicial duties. More than once he seriously contemplated resigning from the bench in order to do justice to his work in the School. Indeed, he actually did so a few weeks before his death. Greenleaf engaged in practice while he was teaching. This he felt to be necessary because of his small salary, but he was constantly expressing the need for another professor who could give his entire time to the School. The disadvantages of a practicing Faculty were deeply felt when both Story and Greenleaf were absent for several weeks, leaving the School in the untrained hands of a temporary instructor. This experience of the School with teachers who had outside interests was so convincing that for thirty years after the death of Story no one was appointed who did not devote all his time and energies to the work of the School, and for three-quarters of a century this has been the settled practice. The result upon legal education not only at Harvard, but throughout the United States, has been most important, for the example of Harvard has sooner or later been followed by every school of consequence in the country. As a result, the teaching of law has become a profession and methods of instruction have been developed immensely more efficient than any which are possible when teaching is a mere by-product of practice.

Professional Teachers

A consequence of professionalizing legal instruction has been a change in the type of teachers. Before 1870 they were almost without exception appointed after several years of practice and usually not until they had gained a reputation at the bar. Story's request for the promotion of Sumner to a professorship was denied, partly no doubt

because he was then a young and unknown lawyer who had not yet made such a name for himself as seemed to justify his nomination. With the selection of Ames directly after graduation from the School a new order of things began. "The gentleman who is to bear the brunt of this new experiment in the constitution of a law faculty," said President Eliot, in his report to the Overseers, "has some unusual qualifications for the place; . . . the experiment will therefore be tried under favorable conditions. It will doubtless prove that young teachers can do very useful work in the Law School as well as in the College, the Scientific School, and the Medical School; indeed, it would not be surprising if they could do a portion of the work of instruction better than older men." Ames' immediate success as a teacher, a success which far surpassed that of his predecessors, showed the practicability of the experiment. In fact, a man of mature age, who has for many years been in practice at the bar, changes his habits with some difficulty. He has become used, as has been shrewdly said, to making himself a temporary specialist in a narrow field, and finds it hard to adapt his mind to the quite distinct profession of the teacher, whose field must be the whole law. Although such men have become distinguished teachers, nevertheless the appointment of a fair proportion of young men, without long experience in practice, has proved advisable in most American law schools.

This new policy has been the more successful because of the change during the century in the conception of law. Before the foundation of the Harvard Law School, law had been looked upon as a trade, and such teaching as was given was rather the instruction which a master gives to his apprentice than instruction in a real science. Story, himself trained in the old system, had felt its inadequacy and at the outset of his service expressed the need of a different method. "The law," he felt, "should

be taught scientifically." In the generation that passed between his time and Langdell's the systematic character of law was emphasized, and Langdell's declaration as to "proper scientific instruction" is well known.

If it be granted that law is to be taught as a science and in the scientific spirit, previous experience in its practice becomes as unnecessary as is continuance in practice after teaching begins. It is common knowledge that a student upon graduation from a law school has a better grasp of the law as a whole than a lawyer whose practice at the bar has for many years been developing his mind toward the highly detailed study of particular questions or the accumulation of isolated sets of facts. The intellectual disadvantages of law practice have been graphically summarized by one of the greatest American advocates, Horace Binney. "This indeed constitutes the great drawback from the profession of the law, not merely that the life of a lawyer has great sameness, but that the investigations which cost him the most time and labor do not in the slightest degree increase his stock of useful knowledge. . . . The lawyer's facts are unproductive of all benefits, except to the fortunate client. When the cause is tried, the facts are of no more importance to the lawyer himself than last year's price of calico, nor to the rest of mankind perhaps half so much. . . . The more causes he has tried, the more time has he lost. The more facts he has investigated the less he knows."

After twenty years of such a life a man may easily be a much poorer teacher than if he had spent the same time in the study of the general principles of the law. The teaching of law being purely intellectual, the requirements for a successful teacher are intellectual requirements only, and experience in practice is not an absolute necessity. Practically no school would feel it wise to appoint a faculty made up entirely without experience at

the bar, and that has certainly never been done at Harvard. On the other hand, a school conducted chiefly by persons drawn from the bar after many years of practice would lack the scientific intellect and the command of technique in teaching which must be found in any successful school.

In the first period of the School no such set schedule of studies as could properly be called a curriculum existed. Professor Stearns gave a few lectures "embracing a general course of legal instruction, in which those parts of our system of jurisprudence in which we do not adopt the law of England are particularly noticed." He also held recitations "in several of the most important textbooks," conducted a moot court and debating club, and required written dissertations. The Curriculum

At the beginning of the second period little change was made. The student still met the professor for "recitation and examination" in several legal treatises, the number of which rapidly increased during the period. Dane had proposed that his professor should prepare and publish courses of lectures on five subjects. Story did prepare and publish a number of treatises, which were afterwards used as the basis of instruction; but apparently he never did anything so systematic as deliver a course of lectures upon any particular subject.

When Greenleaf succeeded Ashmun, there appears to have been no immediate change; but according to accounts of students Greenleaf's lectures were more formal and carefully prepared, and gradually developed into discourses upon special topics, illustrated by treatises, instead of mere comment on specified texts. Upon Story's death, and the subsequent appointment of Kent, a change occurs in the form of announcement of the course of instruction. Courses of lectures on particular subjects of the law are now announced, together with the

name of the teacher of each course. The names of the books studied is also included, as before; but for the first time in the history of the School the course in the modern sense, and not the textbook, is the unit of teaching. Thus, in the Catalogue for 1845–46, the announcement of studies is made in the old form, "The following books are read with the Dane Professor." In 1846–47 it runs, "The following studies are pursued with the Dane Professor." A similar alteration is made in the report to the President. It would be interesting to inquire whether this change was due to the gradual development of Greenleaf's system, or to the previous experience of Kent, who is described as "since 1838 Professor of the Law of Persons and Personal Property in the Law School of the University of the City of New York," and must therefore have been familiar with the subject-course.

A curriculum, then, came into existence in the year 1846. It consisted at that time of three distinct parts:

1. An elementary course, given each year, comprising a study of Blackstone's and Kent's Commentaries. For the first year it was conducted by Professor Kent; in 1847–48 by Professors Greenleaf and Parker; and thenceforth for 22 years by Professor Parsons, until it was abandoned in 1870.

2. Several fundamental courses taught substantially every year during the ensuing third period of the School. These were Real Property, Equity, and Constitutional Law.

3. A number of other courses, regarded as less fundamental, which were offered at intervals during the period; theoretically in alternate years, though sometimes a course was given two years in succession and sometimes more than one year elapsed before it was repeated. The courses given in such alternation at the beginning of the period, with the number of times they appear to have been taught, according to the President's report, are as follows:

| Name of Course | No. times given before 1870–71 |
|---|---|
| Pleading | 15 |
| Bills and Notes | 14 |
| Domestic Relations | 14 |
| Evidence | 14 |
| Shipping & Admiralty | 14 |
| Bailments | 13 |
| Wills and Administration | 13 |
| Partnership | 12 |
| Insurance | 11 |
| Sales | 11 |
| Agency | 10 |
| Contracts | 9 |
| Corporations | 7 |

In addition, four similar courses were added to the curriculum during the period:

| | |
|---|---|
| Arbitration (1850–51) | 6 |
| Criminal Law (1853–54) | 9 |
| Bankruptcy (1854–55) | 9 |
| Conflict of Laws (1855–56) | 7 |

These courses, in the three classes, may be regarded as regular courses. There were in addition special courses, given from time to time as occasion served, as follows:

Parliamentary Law (1848–49)
Civil Law (1848–49, 1850–51)
Currency (1860–61)
International Law (1863–65, 1866–68)
United States Jurisprudence (1869–70)
Writs of Error (1866–67)

All these subjects were offered to all students, without distinction as to class.

With the advent of Langdell came an entire change in the curriculum, as well as a division between those courses which should be taken in the first year of law study, and those which, being more advanced, should be taken later.

Of the four subjects given every year, the elementary course and that on Constitutional Law were dropped. Equity was shifted to the second year. Real Property was continued as an elementary course. Pleading, which had been given pretty regularly, became also a first year subject. The other courses in the first year were Contracts and Criminal Law, irregularly taught before, and Torts, which was entirely new. These five courses have constituted the work of the first year, or the greater part of that work, from that day to this.

The advanced work at first comprised courses that belonged to the earlier period,— Equity, Evidence, Corporations, Wills, and Constitutional Law. To these was added a modern course on Sales, never afterwards omitted. But in a few years advanced courses in the modern form were established. These were Equity (1873), Evidence, Trusts, Property, Bills and Notes (1874), Partnership and Corporations (1875), Agency and Carriers (1876). Other courses were brought into the curriculum as follows: Constitutional Law (1879); Conflict of Laws (1879; omitted from 1888 to 1892, and thenceforth a regular course); Wills (1880–1889, when it was merged in second year Property); Suretyship and Mortgage (1882); Persons (1882); Quasi-Contracts (1886); Corporations, as a separate course (1890); Carriers, which had been dropped as part of the Agency Course in 1885 (1891); Insurance (1893); Damages (1893); Bankruptcy (1898); International Law (1898); Admiralty (1900); Municipal Corporations (1907); Restraint of Trade (1916). In 1899 the course on Carriers was announced as including the law of Public Service Companies. The course on Bailments given in alternate years before 1870 has never been offered since that time as a separate topic.

Several special courses, or courses given at irregular intervals, have been offered since 1870. These are Jurisprudence (in 1872, 1879 to 1883, 1896 to 1901, 1908 to

date); United States Jurisdiction (1872, 1886 to 1891, 1916); Legal History (1886, 1887, 1894, 1912 to date); Roman Law (1897, 1910 to date). A short course on Statutes formed for a few years part of the course on Persons; and an advanced course on Contracts was offered for a few years.

Besides the regular subjects, a number of courses not counting towards the degree have been given from time to time, Massachusetts and New York Practice, Patent Law, Mining, and Water Rights. Several special courses of lectures have also been offered; but these cannot properly be regarded as part of the curriculum. Moot courts on kindred disputations were either required or elective until finally abandoned in 1897.

The graduate courses now offered to candidates for the degree of S.J.D. include Roman Law, and the Principles of the Civil Law and Modern Codes as developments thereof; International Law as administered by the Courts; International Law Problems of the European War; Private International Law; Jurisprudence, with especial reference to problems of law reform in America; Administrative Law; Modern Developments in Procedural Law; Penal Legislation and Administration; History of the Common Law, and Introduction to the Year Books. The course in Roman Law is required for the advanced degree. The candidate must take two additional hours a week of graduate courses. but beyond that is free to elect subjects open to undergraduates if he wishes. Most of the graduate courses are taught without a case book or textbook, and consist largely in the investigation of special topics.

During the whole history of the curriculum it is interesting to note that some courses have been taught for a long period of years by the same person, while others have had no such continued tradition. It is also interesting to note that no teacher in the sixty-five years

under consideration has confined himself to two or three subjects; even those who were identified with one or two courses have from time to time taught several others.

Of the group before Langdell the following persons taught the same course more than ten times:

Blackstone and Kent, Parsons, 22 times.
Property, Washburn, 22 times.
Equity, Parker, 20 times.
Constitutional Law, Parker, 17 times.
Pleading and Practice, Parker, 13 times.
Shipping and Admiralty, Parsons, 13 times.
Bills and Notes, Parsons, 12 times.
Evidence, Parsons, 11 times.
Bailments, Parker, 11 times.
Criminal Law, Washburn, 11 times.
Domestic Relations, Washburn, 10 times.
Insurance, Parsons, 10 times.
Partnership, Parsons, 10 times.

Washburn, whose work on Property was one of the two principal books published at the School during this period, taught the subject 22 times; while on the other hand, Parsons, whose Contracts was the other treatise of importance, taught that but nine times.

In the period from 1870 to 1917 the following courses have been taught fifteen times or more by the same teacher:

Property, Gray, 36 times.
Trusts, Ames, 31 times.
Evidence, Thayer, 27 times.
Equity, Langdell, 25 times.
Contracts, Williston, 25 times.
Agency, Wambaugh, 25 times.
Conflict of Laws, Beale, 24 times.
Criminal Law, Beale, 23 times.
Constitutional Law, Thayer, 22 times.
Pleading, Ames, 21 times.
Sales, Thayer, 21 times.
Insurance, Wambaugh, 21 times.

Torts, Smith, 20 times.
Partnership, Ames, 18 times.
Sales, Williston, 18 times.
Bills and Notes, Brannan, 18 times.
Partnership, Brannan, 17 times.

But teachers who have taught one subject many years have also, as a rule, either before confining their attention to one or two courses or while they did so, taught a considerable number of other subjects in various branches of the law. Thus the teachers named in the foregoing list have at some time, in the Harvard Law School or in some other law school, taught the following subjects:

Gray: Property (I, II, and III), Bankruptcy, Evidence, Agency, Partnership, Persons, Conflict of Laws, Constitutional Law, Jurisprudence (11 different courses).

Ames: Trusts, Pleading, Partnership, Torts, Sales, Bills and Notes, Contracts, Equity (II and III), Quasi-Contracts, Admiralty, Suretyship, Legal History (13 different courses).

Thayer: Evidence, Constitutional Law, Criminal Law, Trusts, Agency, Carriers, Sales (7 courses).

Langdell: Equity (II and III), Suretyship, Mortgage, Pleading, Sales, Bills and Notes, Contracts (8 courses).

Williston: Contracts, Sales, Bankruptcy, Pleading, Bills and Notes (5 courses).

Beale: Criminal Law, Conflict of Laws, Carriers, Damages, Property (I and II), Pleading, Evidence, Equity II, Liability, Legal History, International Law, Jurisprudence, Contracts, Suretyship & Mortgage (15 courses).

Wambaugh: Agency, Insurance, Pleading, Contracts, Property I, Quasi-Contracts, International Law, Equity (II and III), Bills and Notes, Evidence, Corporations, Roman Law, Legal History, Study of Cases (15 courses).

Smith: Torts, Agency, Corporations, Persons (4 courses).

Brannan: Bills & Notes, Partnership, Damages, Bankruptcy, Torts, Evidence (6 courses).

It is clear that a teacher becomes better equipped to teach a subject the longer he teaches it, in the indispensable qualities of knowledge, clearness of conception,

certainty of grasp, mastery of detail, and technique. On the other hand, since no part of our law has developed independently of the rest, no teacher can teach as well as he ought without a wide knowledge of those subjects of the law which lie outside his particular field of study; a knowledge which can most effectually and scientifically be gained by teaching. The experience of the Law School seems to prove that a teacher of law ought to devote the greater part of his life to the study and teaching of one or two special subjects; but that he should also at some time give a number of courses on other branches of the law.

**The Evolution of the Case Book**

The first case book prepared for use in teaching was Langdell's Cases on the Law of Contracts, published in 1871. This collection of cases covered only a few topics in the law of Contracts; and upon each topic covered all the important English cases were reprinted in chronological order, followed by American and Scotch cases. One argument of a great French lawyer was included, to enforce a doubtful point. An index was added. As conducted by Professor Langdell, the principle deduced by the first case was followed chronologically through its developments and applications in the later cases, until by constant iteration all doubt or forgetfulness was removed. This process, slow-moving but irresistible, like Langdell's own mind, was caviare to the general, and his successors did not carry on a course at so slow a rate.

A partial collection of cases on Sales of Personal Property followed in 1872, but was never finished. The cases were selected upon the same principle, and the Index was so full as practically to constitute a short treatise on the subjects covered.

In 1878 appeared his Cases on Equity Pleading, his first completed collection; and in 1879 the second edition

of his Cases on Contracts. Both these collections were followed by summaries of the law covered, concise but profound, which have been useful to lawyers as well as to students. It has usually been felt that too much help was thus given to the student by these summaries; and with the exception of Ames's Cases on Bills and Notes, which had an elaborate exposition index, and Beale's Cases on the Conflict of Laws, the later Harvard case books contained no summary.

Langdell's case books were published by Little Brown & Co. The first books prepared by one of his colleagues were Ames's Cases on Torts, published in 1874, and his Cases on Pleading, 1875. Ames printed and published these collections himself, being unable to find a publisher willing to undertake the burden; and with the exception of his Cases on Bills and Notes (1881) he pursued the same course throughout. It was Ames who really fixed the type of case book in American law schools. His decisions were chosen, not with a purpose of tracing by slow steps the historical development of legal ideas, but with the design, through the selection of striking facts and vivid opinions, of stimulating the thought of the student, and leading his mind on by one step after another until he had become familiar with the fundamental principles of the subject and the reasons for them. Ames himself worked out one or two foundation principles in each topic, guided the class in its discussions to the adoption of these principles, and then used them for the solution of every problem that arose. His method became, at least for his pupils, the typical method of teaching by cases: Keener followed it, and later Wambaugh, Williston, Beale, and their younger colleagues. It may well be said that it was the very wide use of Ames' nine case books that established the case system in other law schools, and this wide use, quite unexpected to Ames, of books which he perforce published

for himself, led to his realizing considerable profit from their sale.

Until 1888 these books of Langdell and Ames were the only case books in use in American law schools; but in 1886 Gerard Brown Finch had compiled for the use of students in the English universities a collection of Cases on Contracts after Langdell's method. In 1888 Gray, who had been teaching Property by lectures, brought out the first two of his six volumes of Cases on Property; and Keener issued a two-volume collection in Quasi-Contracts. In 1892 Thayer published his Cases on Evidence; in 1893 Smith added a volume of Torts to Ames' first volume. Every teacher in the Harvard Law School was now teaching in at least one course from his own collection of decisions; Langdell's case was won in his own school.

At almost the same time the use of case books began to spread to other schools. Wambaugh, a graduate of the class of 1880, went in 1890 to the University of Iowa, where he introduced the system; and in order to teach the use of reports published his Study of Cases (1892), consisting of an introduction, followed by cases on two or three subjects for analysis and discussion. Keener went in the same year to Columbia, where in 1891 he reprinted Finch's Cases, together with the pertinent portions of Leake's Digest. Since this experiment of a modified form of the case system did not prove satisfactory, he returned to the old form in his later collections.

At Harvard meanwhile, in 1891, Chaplin published a volume for Criminal Law, which was succeeded by Beale's book on the same subject in 1894; and since that time collection succeeded collection until every subject taught was covered.

The first case book of outside origin used at Harvard was McClain's on Carriers (1894), which incorporated suggestions by the teacher of that course at Harvard

and was used by him. The earliest books prepared without direct influence from Harvard were Huffcutt and Woodruff's Cases on Contracts, 1894, and Pettee's Illustrative Cases on Contracts and on Personal Property in 1893. In the latter year was also published Snow's volume on International Law, for the use of college students. The increasing sale of these books had attracted those alert publishers, the West Publishing Company, and they entered into competition for a share of the trade. They first proposed to buy the copyright of the Harvard case books; but being unable to do so, they issued successively three series of case books for the use of law schools. Their example was quickly followed, and from the year 1895 the multiplication of case books became more and more rapid.

There can be no doubt that this is for the good of legal education. Every teacher of law has his own way of teaching, which is the best way for him; he needs to select his own topics, make his own analysis, and choose his own cases. Now that the case system of instruction has been adopted in substantially all the large and important law schools, a multiplication of case books is a desirable phenomenon.

Practice Courses

The question of how, and how far, practice should be taught in a law school is one of the unsettled questions of legal pedagogy. There are those who claim to be able, through practice courts, to teach a student as well as he could be taught in an office. The Harvard Law School, while admitting that this can be done, has always taken the position that it would be done at too great an expense, since it would involve the use of time that could much more profitably be spent in learning the science of law. The belief of the School is that law can be studied as a science and in its entirety only in a law school, while practice may be more quickly

and effectively learned outside the school. The precious hours of school instruction should therefore properly be devoted to other learning.

There are, however, certain portions of local law and practice which a student must learn before his admission to the bar; and since it is often desirable that a student be admitted at once upon his graduation from the Law School, the School has felt it a duty to offer such instruction as may be necessary to students who intend to apply in Massachusetts or in New York. The practice of other states is not taught in the School, first, because the number of students intending to practice in any other state is not so great as to justify the expense of a special course; second, because Massachusetts and New York may be regarded as duplicate types, the one having the Common Law and the other the Code Practice. It is common for students who intend to practice in other states to form clubs in which the local practice of their state is studied. This, however, is outside the regular curriculum.

The courses in Massachusetts Practice (begun 1890) and in the New York Code of Procedure (begun 1892) have been given in alternate years since 1896. They are conducted entirely by lectures and demonstrations and include not merely practice in the narrow sense of the term but some instruction in peculiar statutory procedure, such as poor debtor process, liens, and so forth. This instruction has proved sufficient to enable students to pass their bar examinations; and while it is true that the young graduates of the School have been criticised from time to time for not knowing the way to the post-office or not understanding the mechanics of the short trial list, these defects are easily remedied by a few days' experience.

Efforts have been made from time to time to give students some experience in the trial of cases by substituting a trial of the facts before a jury for the argument of ques-

tions of law, whether in the law clubs or in the obsolete moot court. Interesting experiments have been made in acting out a legal injury and summoning the witnesses of the event to testify; and on the other hand in coaching witnesses on the points of actual testimony in their reported trial and having them reproduce the testimony in the Practice Court. Such experiments have been more successful in affording amusement than in substantial benefit to the participants. A fact trial now and then is well worth while, but only as a relief to the tedium of serious work.

Of late years no effort has been made by the faculty to teach Practice except through the regular courses already mentioned. The organization of the Legal Aid Bureau, hereafter described, has given to the students concerned in it a very efficient training in the actual workings of Massachusetts procedure.

## CHAPTER III

### THE LIBRARY

IN its issue of July 12, 1817, the *Boston Daily Advertiser* published an editorial notice announcing that "the government of Harvard University have lately established, under the patronage of the University, a School for the instruction of students at law. . . . The students . . . will have access to a complete law library to be obtained for their use." "A complete law library" must have been a far simpler matter in 1817 than in 1917, but even a hundred years ago the Corporation scented the difficulty which has attended the library at many periods since, and at this moment threatens to arrest its growth and stunt its proper development. "The students shall have access," ran the Corporation's vote establishing the School "to . . . a complete law library [to] be obtained for their use *as soon as means for that purpose may be found.*"

Meanwhile there were very few law books in Cambridge. Cotton Mather had spoken of the library at Harvard College as the "best furnished that could be shown anywhere in all the American regions" and had described the satisfaction he felt when he "had the honor to walk in it, making him think with pity upon princes ignorant of such felicity." The catalogue of that library, published in 1723, shows the whole number of volumes of the common law therein contained to have been seven. Additional law books had been received

between 1723 and 1817, but they were largely books of the civil law — meagre and indigestible provision for the infancy of a school founded to train lawyers in the common law. The Corporation immediately authorrized $500 to "be expended for purchasing law books by the Treasurer joined to the Professor of Law." John Howe added $100 more, and the Professor of Law spent $81.74 more than these two appropriations, a sum which was subsequently made good to him. A year later the Corporation voted that "the University Professor of Law be authorized from time to time to receive from the College library into his custody such law books as a committee of the Corporation appointed for the purpose shall think proper, said Professor to give a receipt and be accountable for the same and to return them when required." Stearns had done what he could with $681.74 to purchase "a complete law library," but he seems to have felt that his collection, if it was to make even a distant pretense of deserving that generous description, must contain many more books than he could buy with the paltry sum at his command. Accordingly, he removed from the College library to his office in College House as many law books as he could find and was permitted to take. The Committee of the Overseers to visit the library grew uneasy. Only a year later it reported: "By finding so very large a number of law books removed from the library, the Committee, with great deference, would inquire whether this accommodation granted to a particular department may not establish a precedent which shall lead professors in other branches not merely to solicit, but with the greatest propriety to expect, a like indulgence, and this be the means of parceling out the library into private houses, beyond the care of the College librarian and the use of those who apply for books." A Committee of the Corporation reported in a similar strain. Meanwhile,

Professor Stearns received no more money with which he could buy books directly for the library in his office. A few lawyers of distinction recognized that the infant needed nourishment, and occasionally fed it books. The Hon. Christopher Gore gave to the College, for the use of the law students, most of the law books he had collected, including many that had formerly belonged to great lawyers like R. Auchmuty, James Otis, Jeremiah Gridley, and Samuel Sewall, and contained their autographs. He also gave a manuscript copy of some of the opinions and judgments of the Commissioners in prize matters, of whom he was one, who had sat under the provisions of Jay's Treaty. The Hon. Daniel Chipman of Vermont gave his Essay on Law of Contracts for the Payment of Specific Articles. The Massachusetts Historical Society gave eighteen volumes of its Collections; Judge Jackson presented a book or two, and Caleb Cushing gave an edition of Pothier on Maritime Contracts which he had translated. Professor Stearns kept his own books on the same shelves as those belonging to the School and lent them freely to the students. The library in his office, small as it was, soon fell into inextricable confusion. Part of the books belonged to him, part belonged to the College, part had been given or lent by the Commonwealth of Massachusetts, part had been given to the College for the use of law students, and part had been purchased for the School with the original fund appropriated by the College and the donation of John Howe.

Although the books were few, the need of a catalogue was already felt. There was no money to publish an official catalogue and in 1826 two students (one of them a son of the Professor) prepared a catalogue and printed it for circulation among their fellow-students. In one of the copies of this catalogue now in the School's library a sign has been written in ink opposite each title. These marks, according to a statement on the fly leaf, indicate:

1. Books presented by Hon. Mr. Gore.
2. Books removed from the College library.
3. Books remaining in the College library.
4. Books belonging to the University Professor.
5. Books purchased by the Professor and to be paid for out of the Makepeace debt.
6. Books purchased in 1817 and 1819 with funds furnished by the College, with one donation of $100 from the late Mr. John Howe of Boston.
7. Books given by a resolve of the Legislature obtained by the Professor in 1818.
8. Books missing.

This catalogue contains 587 titles. Of these 135 belonged to the Professor and 41 remained in the College library. There were many duplicate entries, *e.g.*, Attachment, Treatise on, by T. Sergeant and Sergeant, Thomas, on Foreign Attachment; Laws of New York, 2 vols., Albany, 1802, and New York, Law of, 2 vols., Albany, 1802. About a dozen titles were marked as missing. The Professor took with him his private books when he resigned early in 1829, and the books "removed from the College library" and those "given by a resolve of the Legislature obtained by the Professor in 1818" were subsequently returned. Very little now remains of the original collection, such as it was.

The number of volumes in a library is a poor measure of the value of its contents, but it seems clear that at the end of the first period in the history of the School its library was perfectly insufficient. After all, the School was not yet much more than a lawyer's office, and it was natural enough that the books in it should be few more in number and collected with little more system than the books in the office of the ordinary practitioner of the time.

In November 1829, a month or two after Story had begun to teach in the Law School, he wrote to President Quincy: "One of the most important objects is to give [the

School] at once in the view of every student a decided superiority over every other institution of the like nature. It will, therefore, obtain a fixed reputation with the Public and give some confidence to parents that neither the time of their children nor their own money will be expended without an adequate return. . . . To accomplish this end it is indispensable that students should have ready access to an ample law library which shall of itself afford a complete apparatus for study and consultation. I need not say that no such library now belongs to the College. . . . In a practical sense the present law library is of very little value or importance. We have very few of the best elementary books and of those we have most are of poor editions. . . . The textbooks of study required by the students may be obtained without much difficulty, but those which are required for occasional consultation are very deficient." At the same time Professor Ashmun wrote: "I do not suppose there can be any doubt of the necessity that the student should at once be furnished with an extensive library. It is not only in fact indispensable, but, what is not to be overlooked, it is by them so considered."

Story himself had been carefully collecting a law library for many years. His means were limited — his salary at the School was only $1000 and he persistently refused to allow it to be increased — he could not, therefore, afford wholly to present his library to the School. But because he felt the urgent and instant need, he offered to the College his collection of 563 volumes of Law Reports at $4 per volume. The Corporation accepted the offer, "being satisfied from information obtained from Judge Jackson and Professor Ashmun that the price is very low." In fact it was very low, and the Corporation the same day insured the books for $4000.

There begins the great tale. Story's 553 volumes have now expanded to more than 170,000. From that begin-


DANE HALL

After 1845 when the addition was built in the rear as shown. (*From an old print.*)

ning until to-day the School's library has constantly excelled in size and completeness the library of any other law school in the world. A year or two later Story sold to the School the remainder of his law library, consisting of 384 books in English and 123 in foreign languages, for the very modest price of $1400, less than half the cost of the books.

In 1832 that "spacious building," Dane Hall, the second home of the School, was dedicated and the library was moved into two rooms on the lower floor. In 1834 a second catalogue of the collection was prepared by Charles Sumner, then librarian. The library then contained something more than 3500 volumes. "While writing this page," said Sumner in his preface, "information has been received of a splendid bequest by the late Samuel Livermore, Esquire, of New Orleans . . . of his entire library of works on the Roman, Spanish and French law." President Quincy later said of this library, in his history of the University, "As a collection of rare, curious and important learning, it is probably not exceeded and perhaps not equaled by any other collection of its size in America, if it be in Europe." Both Professors Story and Ashmun realized the importance of the library to the School, as their letters show, and they labored zealously for its advancement.

In 1841 the library contained more than 6100 books and another catalogue was felt to be necessary. "Since the publication of Mr. Sumner's catalogue in 1834," said William R. Woodward, Librarian, "the library has been enriched not only by extensive purchases both in America and in Europe, but by the receipt of Mr. Livermore's splendid donation and by valuable presentations from Mr. Justice Story and other distinguished friends of the legal profession which, while they do honor to the donors, also place this library among the first in this country, or perhaps in any country, as a collection of general and

municipal jurisprudence. The donations and importations since 1834 have been such as to enable the student to verify every citation which is made in Blackstone's Commentaries, nearly complete the collection of European law, both British and Continental, from the earliest times down to the eighteenth century; exhibiting to the student the principal sources of modern jurisprudence. The library also contains several works upon Asiatic law, particularly upon those portions which are in use in the British East Indian possessions. The collection of the modern codes of continental Europe is probably more ample than that of any other in this country; and importations of the most valuable of the latest British and continental law books and legal reviews are regularly made."

Others, however, felt that Mr. Woodward was somewhat too complacent. A writer in the *American Jurist* for October, 1841, said:

"The publication of this catalogue enables us to judge, in some sort, of those means of obtaining a law education, in the Law School at Cambridge, which are independent of the personal labors of the distinguished professors of that institution. In the departments of English and American law, little perhaps is wanting; but, in some departments of general jurisprudence, much is to be desired. In the department of Roman law, for example, we find none of the modern works, with the exception of the unfinished English translation of Savigny's history, by Cathcart, and a French translation of the same work, and the newly discovered fragments of Gaius; and yet, in no department of jurisprudence, has the present century produced more, or more valuable work. We venture to say that, with the exception of the *corpus juris* itself, there is hardly a single book in the law library of Harvard College which a modern Professor of Roman Law would think of putting into the hands of his pupils. We

desire not to be misunderstood. The works on Roman Law, in this library, are undoubtedly valuable, and well deserve a place there; and the same may be said, and for much the same reason, of Bracton, Glanvil, and the year books; but the former are as little suited to the modern student of the Roman Law, as are the latter to the student of the Common Law. . . . In modern works on the Roman Law, the library of the Boston Athenæum is infinitely richer, though that, we believe, has received no accessions in this department within the last fifteen years. In Criminal Law and prison discipline, the works on which, produced in continental Europe within the present century, would, of themselves, constitute a large collection, the library is almost entirely deficient; and, of all modern works of public law, and the philosophy of law, we find few or no traces. Of all the countries of Europe, or, indeed of the world, Germany now produces the greatest number of works on jurisprudence and its kindred topics, which are almost all of them written in German; and, yet, astonishing as it may seem, the law library of Harvard University, — among the first, 'perhaps in any country as a collection of general and muncipal jurisprudence,' containing a nearly complete collection 'of European continental law,' from the earliest times down to the eighteenth century, and furnished with the 'most valuable' among the latest 'continental law books and legal reviews,' — as Mr. Woodward would have us believe, — does not, so far as we have been able to discover from the catalogue before us, contain a single work in the German language!"

But Story and Greenleaf needed no spur. They bought as much as their funds would allow. "It is to be regretted," Greenleaf had said in 1836, "that the state of the funds will not yet enable us to complete the collection of American law as the honor of the Institution as well as the interest of the students would seem to require."

The finances of the School between 1841 and 1846 were easier, and the annual sum spent for books during that period was well over $2500, or more than twice as much as had been spent annually in the seven years between Story's catalogue and Woodward's. A fourth catalogue of the School was published in 1846. The Law School Visiting Committee had reported to the Overseers that "the want of a complete catalogue is felt, though application of it to annual examinations must be attended with some difficulty, as so many of the volumes are in requisition for the students. But being printed, it would become a guide to those who might be desirous of increasing by donation the already admirable collection." The annual catalogue of the University for the academic year 1846–47 gives the number of volumes in the law school library as about 12,000, nearly twice as many as in 1841. In October, 1845, Greenleaf surveyed the result of his efforts and proudly reported "The law library, by comparing its catalogue with those of foreign libraries so far as we have received them, is found to exceed any other known to us, in extent of its range and the variety of foreign laws which it comprises, though several others exceed it in number of volumes." In 1847 the Visiting Committee reported, — "The library is in excellent order and preservation," and "its present state and progressive increase gave much pleasure to the gentlemen who inspected, assisted as they were by Professor Greenleaf."

Story died in 1845 and Greenleaf resigned in 1848. After that, for many years no one seems to have taken particular interest in the library. The School continued to follow its old custom of furnishing gratis to each student textbooks prescribed in his courses, but otherwise purchases of books were on a much smaller scale than formerly. In the academic year during which Story died over $3250 had been spent for books and this was

about $600 less than had been spent the year before. For the two years more that Greenleaf remained at the School purchases were considerable. After that the amount spent for books rapidly fell off. The year after Greenleaf's resignation it was less than $600 and ten years later only a little more than $300. For the whole period of twenty-four years between Story's death and Langdell's appointment as Dean, the average annual outlay for books, including the cost of the free textbooks, was well under $1000. The annual catalogue of the University for 1869–70 announced that the Law School library contained about 15,000 volumes. This was an increase of 3000 volumes in twenty-four years, an average of 125 a year. Very many of these were the duplicate textbooks furnished to the students. It is said that in 1870 there were more than 3000 such books owned by the School and counted as part of its library. Of course these had not all been bought after 1846. If they had been, the increase of the library in twenty-four years would have been exactly nil. At most, it was very small.

But there were other reasons than the apparent indifference of the professors for the slight increase of the library during the quarter century before Langdell. In the first place, it was giving pretty satisfactorily the service demanded of it. In 1846 the Visiting Committee had reported: "The law library is not without reason judged to be the best collection of law authorities in our Union." In 1851 they said in mouth-filling phrase that the library "attracts, as it highly deserves, the attention of not private individuals alone but public bodies also, and not simply that of our own patriotic countrymen, but also of foreign friends to the progress of juridical, civil, and political knowledge." In 1852 it is said that "the library in its completeness is as honorable to the College as it is useful to the students." In 1854 "it is believed that . . . [the School's] library is more afflu-

ent of law books in the English language than any other collection." Moreover, after 1856 times were hard for the School. The library was then wholly dependent, as it is now mainly dependent, on what was left over from necessarily fluctuating tuition fees after the expenses of teaching and maintenance had been paid. The School had had a comfortable balance on the treasurer's books until 1856–57, when the unfortunate investment in Brattle House turned a surplus of over sixteen thousand dollars into a deficit of over six. It was almost ten years before there was a surplus again. During these years, of course, as much saving as possible had to be effected in the general funds of the School, and that meant small expenditure for books.

Probably the straitened financial circumstances of the School furnished the reason, also, for the delay in the appointment of a permanent librarian. As early as 1855 the Visiting Committee had reported "little regularity in the management of the books and a general want of neatness and method," and suggested a permanent librarian. The student librarians could in the nature of things look after the books only half-heartedly, and many were lost. In 1858 it was said that 150 books were missing, "being 41 more than the total additions during the year." Such a condition, said the Visiting Committee, disclosed "a bibliofuracity . . . deserving of special punishment . . . carelessness not to be distinguished from crime." Another committee reported in 1861 that an examination of the books in 1858 showed that in the past twelve years the total losses had amounted to 870 volumes. "Your Committee," it said, "looks upon this state of things as truly alarming; . . . security should be the first law of such a collection. . . . The Librarian is not a librarian in the common acceptation of the term —a keeper of books—for he exercises no special supervision." . . .

The modern life of the School and of its library began with the coming of Mr. Langdell in 1870. The change in methods of teaching which Langdell inaugurated and which his colleagues and then the country gradually adopted involved of necessity radical changes in the library. The law, Langdell thought, was a science and not a collection of isolated facts. To learn this science, as to learn any other, the student must seek the living founts — he must deal in the stuff that forms the subject matter of his study. As the new Dean said: "The library is to us what the laboratory is to the chemist or the physicist and what the museum is to the naturalist." No one knew as well as he what was needed to make the library a fit instrument for his teaching, for while his plans still puzzled others, they were clear in his own mind, and moreover he had himself served as librarian for several years, when he was a student in the School. Three steps were necessary at once, and they were taken without delay. A permanent librarian was employed, the supply of free textbooks to the students was cut off, and duplicates were supplied of such reports and other books as were in frequent demand and would be needed even more under the new method of teaching. The School's "rich library," said the President in his annual report to the Overseers, "is an indispensable aid to the student. The Corporation, feeling the importance of still further enlarging this library and improving its administration have, during the year 1870–71, employed a permanent librarian, spent about $1200 on the shelves and other fittings of the room, and about $3400 on books and binding." But the story of the change and the mechanical devices by which it was aided is best told in the Dean's own words. In his report for 1870–71 he wrote:

"At the beginning of the year important changes went into effect in regard to the law library. Prior to that time it had been kept together, the books being

arranged in alphabetical order, and there being no systematic attempt to provide duplicates of such books as were in constant use. From the opening of Dane Hall in the morning to the closing of it in the evening the entire library was accessible, without restriction and without supervision, not merely to the members of the School, but to all persons. The librarian had generally been a member of the School, who occupied a room in Dane Hall, and received a trifling compensation in addition to his room rent and tuition. It was not any part of his duty to spend any of his time in the library; still less to exercise any authority or supervision over those who used it. The janitor had certain duties to perform in reference to the library; but it was not his business to exercise any authority or supervision over those who used it, nor was he expected to remain in it, except when certain specific duties required his presence. In fact, as the librarian and janitor were situated, it was out of the question for them to exercise a constant supervision over the library, and any partial supervision would have been useless.

"The result of this system being found very unsatisfactory, it was decided to make three radical changes, namely: First, to require the constant attendance of the librarian or his assistant in the library during all the hours that it was open; second, to render the general library inaccessible except with the librarian's permission; third, to procure duplicates of all such books as are in constant use, and with these to form a working library, to which every student should have free access.

"During the summer vacation of 1870 these changes were carried into effect. A permanent librarian was employed, whose duty it was made to devote his whole time and attention to the interests of the library. The working library was formed in the main by taking such books from the general library as seemed desirable for

that purpose, and supplying their places with new copies. In this way the library has been supplied with duplicates of all the most important English reports, of the Massachusetts reports, of the reports of the Supreme Court of the United States, of all the most important New York reports, of the most important Digests and Abridgments, and of a good number of standard treatises. The working library has also been furnished with a good collection of standard works of reference. Whenever there is but one copy of a book, it is kept in the general library, except in case of mere books of reference; but as often as any book is found to be in sufficient demand to make a copy of it desirable in the working library, an additional copy is obtained for that purpose. The duplicates which have been purchased f r the general library, to supply the places of those taken out for the working library, have been invariably the best editions that could be procured, well bound and in good condition.

"The working library is separated from the general library by a railing, and when books from the latter are wanted, they are given out by the librarian and his assistant, the names of the books being entered on a slip of paper, which is retained until the books are returned. When a student asks permission to go behind the railing to examine books, such permission is never refused when the librarian is present. It is proper to notice another important change. It had always been the practice to furnish every student, as a gratuitous loan, with a copy of every textbook used in the school. This made it necessary to purchase from one hundred to one hundred and fifty copies of every new textbook introduced; and as the works used as textbooks sometimes consisted of as many as three or four volumes, and as the books thus purchased were generally superseded in a few years by other books, or by new editions, it was found to be a great and constant source of expense to the school; so great, indeed,

that the general library had suffered severely in consequence, it being impossible, for want of funds, to supply its most pressing needs. This practice has been entirely discontinued since the beginning of the year 1870–71, so far as the purchase of new books is concerned; and students have been left to supply themselves with such books as have been introduced since that time. No reason has been seen for doubting the wisdom of this change. There are obvious advantages to the student from owning the books which he uses as textbooks; he can always supply himself with the best editions; and, as the course of study is now arranged, it is believed that the necessary expense for textbooks in the Law School is not materially greater than in the College proper."

From 1870 until to-day the history of the School's library is writ large in the reports of the Deans of the School to the President and of the President to the Overseers. The space given to it in both series of reports indicates the important place it has filled in the minds of the governing boards of the University and the care and thought that have constantly been expended on its development. "The Corporation," said the President, "recognize the fact that the library is the very heart of the School." "The most essential feature of the School," said the Dean, "that which distinguishes it most widely from all other schools of which I have any knowledge, is the library. I do not refer to the mere fact of our having a library, nor even to the more important fact of its being very extensive and complete; I refer rather to the library as an institution, including the relation in which it stands to all the exercises of the School, the influence which it exerts directly and indirectly, and the kind and extent of use that is made of it by teachers and students. Everything else will admit of a substitute, or may be dispensed with; but without the library the School would lose its most important characteristics, and indeed its identity."

The use of the library increased so rapidly that within two years the Dean was seriously alarmed at the "great wear upon the books." The only purpose of books, of course, is to be read, but if fifty or a hundred men, one after another, read and thumb the same pages in one volume, those pages are likely to wear out and the volume become imperfect and consequently the set to which it belongs. A whole set of books which are not in the market and which it is almost impossible to procure may be ruined by the excessive use of a single volume for a special purpose. The Librarian was reported to be in despair about it. "It is not a large proportion of the books of the library," said the President, "which are being destroyed; but it is the books most referred to by the teachers, which are presumably the most valuable books for present use in teaching." Reprinting the worn pages was a costly and unsatisfactory remedy. The difficulty was not really solved until teachers began to print together in one volume the cases which they expected the class to study. It is believed that the modern case book owes its birth to this purely mechanical difficulty. The separate publication of selected cases arranged by topics became a part of the Langdellian method of teaching law.

But this device did not entirely cure the inevitable ill. Illustrative cases which no case book of possible dimensions could contain must still be referred to and read. "Since the date of my last report," said the Dean, many years afterwards, "it has been decided to increase the usefulness of the library by providing it with another copy of every set of English and American reports which is used to any considerable extent. With a view to the speedy accomplishment of this object, the Librarian made a trip to England during the last summer vacation, and, while there, he succeeded in purchasing, on very favorable terms, 1377 volumes of English reports, making, with extra sets of English reports already belonging to

the library, 1637 volumes. We have also availed ourselves, and are still availing ourselves, of every good opportunity to purchase another copy of every set of American reports of which another copy is at all needed, and our purchases of such reports already amount to 508 volumes. When this plan has been fully accomplished, the library will have three copies of all the more important sets of English and American reports, and of several sets it will have four copies."

Meanwhile the School grew steadily in fame and in numbers, and added steadily to its library. The collection had now become so valuable that the authorities began to think of the risk of fire. Dane Hall was not fireproof, and in winter six or seven fires were kept burning in the building to heat it. Of course the books and the students must be kept together. "There is needed, therefore, for the Law School," said the President as early as 1873, "a new building, a large part of which shall be fireproof." Besides, the library was uncomfortably crowded. In 1877 the evil had increased to such an extent that not infrequently students were unable to find a place to sit. In a year or two more conditions were almost unbearable. The Dean said: "Regarded as a repository for books, the accommodation afforded by Dane Hall is very bad in quality, and in the near future it will be absolutely insufficient in quantity. During the summer, when it is necessary to keep the windows open, the books suffer greatly from dust, while during the cold weather they suffer greatly from heat. The evil arising from excessive heat is greatly aggravated by the necessity of utilizing for the storage of books all the space from the floor to the ceiling. The books also suffer from gaslight during all seasons of the year. Again, the danger to the books from fire is so great as to be a cause of constant anxiety. If the library should be destroyed, it is probably safe to say that a hundred thousand dollars

would not replace it; and its value is increasing rapidly. Bad, however, as is the quality of the accommodation afforded for the storage of books, an increase in its quantity is the most immediate and pressing need of the library. Already the Librarian has been compelled to remove large quantities of books from the library into private rooms; and even this resource, to say nothing of its inconvenience, will soon be exhausted."

A few more very uncomfortable years, and the library was moved, in the last weeks of September, 1882, into "the very handsome and commodious building which the School owes to the munificence of Edward Austin, Esq., of Boston." "It would be hard," said the President, "to exaggerate the advantages which the School derives from the possession of this admirable building. The reading room, which is the chief resort of the students, is a noble room, light, airy, and handsomely furnished; the book room is fireproof, well lighted, and capacious enough to hold the present library and the probable accessions of fifty years."

All in all, the School and its library were now in a position of great strength. In a few years the time was considered ripe for a review of achievements. Of the library Dean Langdell wrote in 1890 to President Eliot.

"In 1869–70 the library was so nearly a wreck that it required to be reconstructed almost from its foundations. Now it is believed to be larger (referring only to law books proper, and excluding statutes), more complete, and in a better condition than any other law library in the United States, with the possible exception of the national library at Washington. . . . Prior to 1870–71 the only persons employed to care for the library were a student-librarian and the janitor of Dane Hall. . . . Now, a permanent librarian, a permanent assistant librarian (both of whom have held their present positions for the last eighteen years), and three assistants are constantly employed in

the care and administration of the library and in other administrative duties. Prior to 1870–71, and subsequently to the time of Professor Greenleaf, no one connected with the School took much interest in the subject of purchasing books for the library. The practice was for the booksellers with whom the School kept an account to send to the library a copy of every new book received by them; and as to each book so sent, one of the professors decided whether it should be kept or not. As to the purchase of other than new books, there was no system whatever; and such books were seldom purchased unless for some special reason; and when it was decided to purchase any such books an order for them was given to a bookseller. Under this practice the library seldom received any accessions of old books; and, even had this been otherwise, it would almost inevitably have happened that most of the accessions received would represent some person's hobby, and so would improve the library only in some one direction. Moreover, old books purchased in such a way are sure to cost two or three times as much as they need cost. There are thousands of law books without which no library is perfect, and which yet have no fixed market value, and which may be said to be more or less rare in the sense of being more or less difficult to find, but very few of which are rare in the sense of commanding a high price in the market. The only way, therefore, to purchase such books to advantage is to seek opportunities of purchasing them at a low price, and to purchase them, as a rule, only when such opportunities offer. It was therefore decided, about seventeen years ago, that the Librarian should make it a part of his duty to follow up auction sales of law books in all the principal cities of the United States. Accordingly, on the 22d day of January, 1874, he attended an auction sale for the first time and purchased 36 volumes. . . . Prior to 1870–71 there was never, so far as is known,

AUSTIN HALL

Occupied since 1883. Gift of Edward Austin, Esq.

any collation made of books purchased for the library for the purpose of ascertaining whether or not they were perfect. Indeed, the practice of collating books was not begun until January, 1874; but since that date every book purchased for the library, whether new or old, and whether purchased at private or public sale, has been collated, page by page, before being accepted. Soon afterwards the work was begun of collating, page by page, all the books that were in the library prior to the date just mentioned; and this work has since been prosecuted with as much rapidity as possible; and no money has ever been spent in rebinding or otherwise repairing a book until it was first collated. . . . Prior to 1870–71 the library was as little cared for in respect to the binding and repairing of the books as in other respects. Binders were employed with little regard to their ability to do good work, and little pains were taken either to give them proper directions or to see that they did their work in accordance with such directions as were given them, or that they did it properly; and the results were deplorable. In no case was the work what would now be regarded as good; in many cases it was shocking in respect to the work done and the materials employed; and in many other cases books were actually ruined by the binder. Since 1870-71 the most strenuous efforts have been made to improve the administration of the library in respect to the binding and repairing of books; and, though the success of these efforts has not been all that could be desired, yet it has upon the whole been gratifying; for the library may now safely challenge comparison in respect to its condition with any other law library in the United States. . . ."

Welcome as the extraordinary growth of the School was, it brought with it serious mechanical difficulties in administration. "When Austin Hall was erected," wrote the Dean in 1891, "it was expected to furnish ample

accommodation for all the students who would seek admission to the School during the next fifty years. Only eight of those fifty years have now passed, and yet the building is already outgrown. . . . Nothing short of an additional building and an additional library will make it practicable for the School to furnish suitable accommodations for a larger number of students than it now has." For the moment, however, the reading room was enlarged by adding to it a space theretofore little used. "The library and reading room," said the President, "constitute the sole laboratory which the Law School needs; and it is the intention of the Faculty to keep that one laboratory in the most serviceable condition possible."

It was no light task to carry out this intention. In 1900 the President reported that the "library is growing, and threatens to continue to grow, at the rate of more than 6000 volumes a year. An immediate enlargement of the building is imperatively demanded; and in planning that enlargement it seems to be necessary to look forward to a law library of more than 100,000 volumes within ten years." (It is an interesting fact that ten years later the library contained 120,600 volumes and 13,390 pamphlets.) In 1901 Dean Ames reported that "the School has been enlarging its library at a rapid rate; and by the end of the current year, the shelving in the present building will be filled. As there is no reason why the School should not spend $12,000 a year on books, and as books are the sole apparatus required by a law school, the expediency of providing immediately more shelving on which to place the accessions is obvious. The chief distinction of the Harvard Law School — after its professors — is its admirable library." As a temporary expedient, the overflow of the library was stored in a building abandoned by the Lawrence Scientific School, and in the cellar of Hastings, "to the inconven-

ience of the reader, and at the disquieting risk of the destruction of the books."

Finally, the crowding in Austin Hall was no longer to be borne. The Corporation did not think fit to provide more accommodations out of the general funds, and the money to build Langdell was taken from the surplus that the School had accumulated, the income of which it was spending annually on its library. In the fall of 1907 the Dean announced the completion of the new building, and prophesied that Austin and Langdell "will, for a dozen years at least, give dignified, attractive, and ample accommodations for all the needs of the School." Dying three years later, Mr. Ames did not live to see that the extraordinary increase of the School in numbers was likely again to shorten the term of ease prophesied by those who had carried through an enlargement of the physical plant.

Since the practical disappearance of income through interest on the surplus, the library has had a number of opportunities materially to increase its usefulness. Some of them, even some of very high importance, as, for example, the purchase of the great criminological library of Sellier, were necessarily missed, but in the years between 1911 and 1914 at least four were embraced, each of which was thought to justify a draft on the principal of the small remaining surplus. In one instance, the purchase was made possible by a private subscription, raised hastily among well-wishers of the School.

In 1911 the library acquired the remarkable collection of Bar Association Proceedings which had been made by Francis Rawle, Esq., of Philadelphia, believed to be the only complete collection of State Bar Association Proceedings in existence, necessary apparatus for a study of the development of law and legal thought in America.

In 1912 there came a sudden chance to buy the great international law library of the Marquis de Olivart.

The catalogue of this collection is constantly referred to in recent treatises on the subject as the standard bibliography of international law. "It purports to note only works in the author's own library," says Sir Frederick Pollock, "but we know of nothing approaching it in completeness." The Faculty was impressed by the fleeting opportunity, and felt justified in expending in the purchase a considerable part of the small surplus that remained.

In 1913 was offered for sale another library of high, though very different importance, the fruit of a lifetime of diligent and intelligent collecting of the manuscripts and printed books wherein the growth of the Common Law may be followed back as far as written record exists. It was the last considerable collection of such material remaining in private hands. By the generous aid of the School's alumni and friends, it was made possible for the library to purchase the Dunn collection *en bloc*. Before this purchase, the School possessed the greatest collection of early English law books in this country; it has now placed itself, as has been said, "far beyond the possibility of rivalry." Perhaps the total number of Year Books printed was not more than four hundred and fifty; of these the School had two hundred and seventy before the Dunn purchase, and after it three hundred and twelve, many more than are in the British Museum, its nearest competitor.

In 1914 the School purchased a very large collection of material from South America. Dean Thayer wrote to the President: "There appears to be no considerable collection in this country of the laws, decisions and doctrinal legal writings of the southern republics, unless perhaps at the Library of Congress. Yet in the process of time these countries seem likely to play a very large part in our commercial and, perchance, in our political life. As we grow more intimate with them, we shall

need more and more to know something of their legal history and everything of their present legal status. For some years attempts have been made from a distance to acquire for the School the materials whence this knowledge might be drawn, but the results have been fragmentary. In the spring of 1913, however, a chance came to take advantage of the journey to South America on a book-hunting mission of the librarian of a sister institution, the skilled buyer through whom the School acquired the Olivart Collection, a man singularly well endowed and trained for the work he was undertaking. Dr. Lichtenstein has now been in South America for a year, and he and his principals are well satisfied with his success. He has visited all the republics and has bought for the School complete, or nearly complete, collections of their legislation, the reports of their courts, and the works of their great legal writers."

It should be interesting at this point to see how the library of the School, after its varying fortunes through the last hundred years, and in view of the somewhat complacent praise which has at times been its portion, compares to-day with the libraries of other law schools and with other law libraries in general. The measure of value of a library is not the number of books it contains, but the class of readers it serves and its ability to satisfy their needs. Nevertheless, number of volumes is an easy test, though unless the books be carefully selected, most fallible; moreover, it is the only test for which statistics are available.

In 1912 the *Law Library Journal* published a list of well over five hundred law libraries and law departments of libraries in the United States and Canada, with a statement of the number of volumes in each. The Harvard Law School, with 150,000 volumes, contained approximately three times as many as the library of the school nearest it; four bar association libraries contained

over 50,000 volumes each, the largest of them nearly 94,000; the law library of Congress and the Supreme Court contained 145,000 volumes. Measured, then, by this admittedly superficial standard, the library of the School is approached in America only by the library of Congress. As to England, Dicey, writing for the *Contemporary Review* in 1899 on the teaching of English Law at Harvard, had said of the library, "It constitutes the most perfect collection of the legal records of the English people to be found in any part of the English-speaking world. We possess nothing like it in England. In the library at Harvard you will find the works of every English and American writer on law; there stand not only all the American reports — and these include, as well as the reports of the Federal courts, reports from every one of the forty-five states of the Union — but also complete collections of our English reports, of our English statutes, and of the reports and statutes of England's colonies and possessions. Neither in London nor in Oxford, neither at the Privy Council nor at the Colonial office, can one find a complete collection, either of American or even, astounding as the fact sounds, of our Colonial reports."

A better idea of what the library of the School contains, so far as figures throw light upon the matter, may be gathered from the results of a count of the books upon the shelves made for a special purpose in April, 1916. The books are so arranged in the library that they could without much difficulty be counted in classes. Pamphlets, of which the library contains some 20,000, were not counted, except in a few instances where they were waiting to be bound, when they were counted as if bound. The results of the count are shown in the following table, which is believed to be as accurate as such figures can be.

| | Total Vols. | Of These Duplicates |
|---|---|---|
| Reports, digests, guides to cases, etc. | | |
| American | 32908 | 19560 |
| British | 13063 | 6526 |
| Canadian and other British Colonial | 3337 | 12 |
| Statutes, codes, session laws, etc. | | |
| American | 6365 | 271 |
| British | 1854 | 309 |
| Canadian and other British Colonial | 3305 | 226 |
| Textbooks and treatises upon English and American law (including Law Dictionaries, Encyclopædias, and case books) | 26805 | 6261 |
| Roman and foreign law | 47442 | 1786 |
| International law | 14876 | 1200 |
| Periodicals, including Bar Association reports | 5914 | 1580 |
| Records and briefs | 4236 | 0 |
| Legislative journals, and other government documents not included in above classes | 2338 | 22 |
| Miscellaneous | 2377 | 177 |
| Reports of Attorneys-General | 208 | 0 |
| Reports of Public Utility Commissions | 838 | 157 |
| Trials | 4265 | 400 |
| City and Town Ordinances and By Laws | 1498 | 60 |
| Total | 171629 | 38555 |

The library of to-day has been made possible only by the constant help of its friends. Sometimes they have given money — more often they have given collections of books. To name only those who have given most is to call a considerable roll of benefactors. John Howe's gift of $100 already mentioned does not look large beside the sum of $10,000 contributed by the friends of the School toward the purchase of the Dunn books, but it should be compared with the whole amount appropriated by the Corporation to the library during the first decade of its existence. Sometimes, as B. R. Curtis did in 1874, an instructor has remitted his fee with directions that it be applied to the purchase of books on his subject. Occasionally others have seen special needs and given to the

library funds wherewith to meet them. In 1882 friends and alumni of the School subscribed, in sums of from $5 to $25,000, a fund of over $47,000, the income to be devoted to the purchase of books, and the income from this fund forms an important part of the library's spending money to-day. The gift of $10,000 for the Dunn purchase has been mentioned in passing. In 1914 the late John L. Cadwalader bequeathed $20,000 to the Corporation for the purchase of books for the library of the Law School, a most opportune addition to the library's small endowment. As to books, the gifts of Christopher Gore in the first decade and the bequest by Samuel Livermore of his noble library of "works on the Roman, Spanish, and French Law" have been mentioned in their place. Individuals gave individual books from time to time after the Livermore bequest, but no further notable gift of books was received until in 1903 Mr. Edward James Drifton Coxe gave to the School the law library of his father, the late Brinton Coxe, consisting of 3225 volumes and 92 pamphlets and containing many rare volumes of English, American, Roman and Canon Law, together with a nearly complete set of the decisions of the Rota Romana. About the same time Mr. Learned Hand, now Judge Hand, gave 1421 volumes from the library of his father, the late Samuel Hand, Associate Judge of the Court of Appeals of New York. (To this gift Judge Hand added almost as many more volumes in 1915.) Another gift of very high importance was received some months afterwards. The late Mr. Justice Gray had, since he had gone to Washington, kept the printed records of cases decided by the Supreme Court of the United States. These his widow now presented to the School. They were bound up in 1300 large volumes. This particularly valuable set is kept up through the kindness of Mr. Justice Holmes. In 1905, by the will of the late James M. Barnard, subject to the approval of Mrs. Barnard, the

library received his law books and portraits of lawyers. An additional gift of $2000 for the purchase of books, preferably works on International Law, was made by Mrs. Barnard. About the same time some very early and valuable Pennsylvania Laws were presented by Dean Ames, who had a habit of giving to the School whatever of value belonged to him, and Mrs. Langdell gave ninety volumes of important and valuable early English Reports which had been deposited for many years in the library by the late Professor Langdell.

But not even the fostering care of the governing boards and the help of its friends could have raised the library to its present position of primacy among the law libraries of the world without the steady care, the boundless devotion, and the wise insight of its Librarian, John H. Arnold, now its Librarian *Emeritus*. Announcing Mr. Arnold's resignation in 1913, Dean Thayer said: "Mr. Arnold was appointed Librarian in August, 1872, and his term of more than forty years' service thus included almost all Mr. Langdell's term as Dean, and the whole of Mr. Ames's. In the history of the School his name will always be linked with theirs. Working in the closest coöperation with them, and like them utterly devoted to the interests of the School, he did so much to build up the present library that it stands to-day as a monument to him. When he took office it contained less than 10,000 volumes; before he retired it had grown to a total of over 150,000. These figures, impressive as they are, leave much of the story untold, for they tell nothing of Mr. Arnold's achievements in securing books cheaply before the development of a demand which greatly increased their value. He early acquired an unique knowledge of the opportunities for buying English and American law books; and to unceasing vigilance he added a singular wisdom in forecasting the future. As a result the library has to thank

him for very many valuable books obtained at prices which to-day are hard to believe."

It were tedious now to describe in more detail the component parts of this great collection of books, or to dwell longer on the steps by which the Harvard law library has attained its admitted rank in its field, a rank which brings with it grave responsibilities. The law of life is growth or decay, a truth particularly well illustrated in the life of a collection of books. Shall the maturity of our library fulfil the promise of its youth? The future beckons. Unfortunately the library has not to-day resources enough to meet that future confidently. It may be interesting to examine the situation more particularly.

In reporting in 1900 the retirement of Professor Langdell from the law faculty, Dean Ames had said: "When he came to Cambridge thirty years ago he found here the wreck of a library. He leaves the library without a peer among the law libraries of the world." In truth, apparatus for the ordinary study of the law, including, where necessary, duplicate copies of much used books, was pretty well supplied. Much, however, remained to be done. For example, the collection of the laws passed by the various legislatures of the United States since the Revolution was good, was even very good, but a considerable number of the rarer sessions were still lacking. Completeness in a collection of this sort is in the highest degree desirable, but of course the more nearly completeness is attained the more expensive and difficult, relatively, becomes each step forward. The legislation of the American colonies also is of great importance to a library that pretends to furnish materials for a complete understanding of the history of the law in America. The original sessions are, however, so rare and command so high a price that the School cannot, under ordinary circumstances, afford to compete for them. Nevertheless, the library is in a position to know of occasional opportunities for

the acquisition of this valuable material at comparatively reasonable prices, and it is unfortunate that such opportunities must at present be passed by. They are not likely to recur, or they will recur only with diminishing frequency and at ever increasing cost, for other institutions are in the field and are eager buyers. It is particularly unfortunate that the Harvard Law School must let such opportunities slip, for it is clearly not to the general good that material of this sort should be scattered instead of being added to the already large collection in the School's possession.

Moreover, while the School was earning a comfortable surplus year by year, the Faculty felt authorized in acting on their conviction that the law could be best taught only in a place where its history, philosophy and content might be thoroughly studied and made known. They realized that the law was properly to be regarded as "a great anthropological document," and so regarding it, they desired that the library of their School might show the manner of development of legal institutions wherever the race had reached an ordered life. Taken as a counsel of perfection, this meant collecting the laws of all civilized communities and the opinions of judges and commentators upon them from the beginning, as well as the books that revealed what had been thought about the law and its philosophy from age to age. Short of attaining this counsel of perfection, the Faculty felt sure that a well ordered law library should contain "an adequate representation of all existing legal systems, having due regard to their respective practical importance." They hoped to develop the library into a home for persons interested in comparative jurisprudence, a common meeting ground for teachers and students (or, better, because all are students, for those whose paths were the higher walks of jurisprudence and for the students of every day) where each class might benefit by the other's labors. The busi-

ness of their School, the Faculty felt, was not merely to teach law and to make lawyers, but, as one of the most inspired of its pupils has said, "to teach law in the grand manner and to make great lawyers." "The aim of a law school should be," said Judge Holmes, "the aim of the Harvard Law School has been, not to make men smart, but to make them wise in their calling, — to start them on a road which will lead them to the abode of the masters. . . . For whatever reason, the Professors of this School have said to themselves more definitely than ever before, 'We will not be contented to send forth students with nothing but a rag-bag full of general principles,— a throng of glittering generalities, like a swarm of little bodiless cherubs fluttering at the top of one of Correggio's pictures.' They have said that to make a general principle worth anything you must give it a body; you must show in what way and how far it would be applied actually in an actual system; you must show how it has gradually emerged as the felt reconciliation of concrete instances, no one of which established it in terms. Finally, you must show its historic relations to other principles, often of very different date and origin, and thus set it in the perspective without which its proportions will never be truly judged." "It is perfectly proper," Judge Holmes has said in another place, "to regard and study the law simply as a great anthropological document. It is proper to resort to it to discover what ideals of society have been strong enough to reach that final form of expression or what have been the changes in dominant ideals from century to century."

Perhaps it is not difficult to scoff at this plan of study. One may sincerely believe that the young man undertaking to learn the practical profession of the law, through which he is to earn his daily bread, should not be distracted by much talk of the history and philosophy of the matter. In a sense this is true. But those who are to guide his

steps should certainly have a large view of the country through which they are to travel together. Perhaps together they may build new roads. At any rate, for law teachers, present and future, no opportunity to gain knowledge of the law as it has existed in any time or place, and of the manner of its development, can be called superfluous. The Harvard Law School would fain continue to train teachers. It has not only the intellectual needs of its own Faculty to satisfy, but it craves ability to satisfy the desire for learning of many of its own keener pupils and of those who come to its fourth year course from other institutions, that they too may thereafter impart what they have learned. The School wishes to satisfy the longing for productive research that has taken possession of so many scholars in these days when the old law is giving place so rapidly to new. The Faculty believes that "a general view of the law, its function, resources and limitations, is indispensable for a sound administration of justice, the end for which law and law schools exist." As the courts become more and more crowded with business, the judges have less and less time for full examination of the cases before them and they necessarily turn with increasing frequency and increasing reliance to the unhurried work of the legal scholar. The School aims to satisfy this demand for the work of the legal scholar and desires to make its library a fit instrument for his training, and to keep it such an instrument.

Incidentally, the collection of the legal literature of other countries than England and America has had its advantages for actual practice. With improvements in exchange and transportation, the mere business need of the United States to know the laws of its neighbors in the world has increased vastly and is increasing with ever greater rapidity. Recently the course of justice in parts of our country as far from each other as Montana

and Maine has been aided by counsel who have applied to the Harvard Law School for their authorities, in one case for an Austrian statute of many years ago concerning promissory notes, in the other for the provisions of the Italian Civil Code concerning a point in the law of wills, with the subsequent session laws. This is such service as Harvard should give. It is such service as it gave so long ago as 1844 when the great case of Vidal *v.* Girard was decided in part on the authority of a then very recent opinion of Lord Chancellor Sugden, which the judge who spoke for the court had seen in the library of the School, there being at that time no copy of the Irish report containing it in Philadelphia, where counsel for the successful party lived, or in Washington, where the court sat.

There is at least one more kind of work that the Library should undertake but which it cannot think of performing with its present income. An author catalogue of its books on the American and English Common Law was published in two volumes eight years ago. Since then more than fifty thousand volumes have been added to the library, the larger part of them, of course, within this field. The slugs used in the 1909 catalogue have been preserved, so that it should not be a difficult matter to issue a second edition. This, however, is work that will not pay for itself and the library has no funds with which to undertake it. A subject catalogue of the same books has been kept on manila slips, ready for the printer, but there is no money to publish it. A catalogue of the Dunn collection, to which many items were added from the books already here, would give a fair idea of the English law books printed before 1600; indeed, such a catalogue might be enlarged to include mention of known books that are not here. No catalogue of the books on foreign law in the library, now numbering between 45,000 and 50,000, has ever been published, although both author and subject slips have been prepared as the books

were acquired, ready after some revision for the printer if funds for publication were at hand. It is the duty of a great library to supply these bibliographic aids to the world, but this duty must for the present be neglected.

Although, when Langdell Hall was built, the Faculty cherished these higher ideals of service, it was plain that the School must somehow meet the demands for shelter of the young men who thronged its gates, and these demands could no longer be met without a new building. If the only way to get the building was through sacrifice of the higher ideals which the School had formed, the pursuit of those ideals must be left to some other institution better endowed with the means to procure the necessary tools. So Langdell Hall was built, and the School's surplus was mainly spent in the undertaking. In 1906 interest on the surplus had amounted to over $15,000; in 1908 it was less than $2500 and the average yearly return since has been smaller than that. Latterly, as the amount required for the maintenance and operation of the physical plant has steadily increased, the expenditure for books has steadily decreased. Thus, in 1912–13, the amount expended for books (excluding $10,000 given to assist in purchasing the Dunn library) was $26,997; in 1913–14 it was $18,495; in 1914–15 it was $15,349, and in 1915–16 it had fallen to $13,588. Such parsimony in the library is at present necessary if the School is to keep a safe margin of income over expenditure. But parsimony can go little further. The expenses of the library cannot grow materially less. Indeed, even if the library give over its attempt to bring to completeness some of its more important collections, *e.g.*, its collection of American statute law, and forego its desire to furnish investigators and future teachers with the materials for the study of comparative law, the expenses of the library must nevertheless constantly tend to increase. If the School is to keep its preëminence in

English and American law, old serials cannot, save in exceptional instances, be dropped, and new continuations must be added from time to time. New courts whose decisions are reported and cited appear constantly. It would be unfortunate if the School must pass them by and be forced to confess, at the last, that even in English and American reports its library is less than complete.

Speaking of this matter in 1913, and of the library's "position of primacy among the law libraries of the world," Dean Thayer said: "Through this position come heavy responsibilities. The larger a law library is, the faster it must grow. Old serials must in general be kept, up, and new serials must be constantly added. What may be called the fixed expense thus inevitably tends to increase. Obviously the library should be sure of funds to meet this fixed expense. Moreover, if it is to take full advantage of its opportunities, it sorely needs a fund large enough amply to supply what may be called working capital. Much of the value of the Olivart collection is due to the activity of the Marquis de Olivart in keeping abreast of the times, and adding, at relatively slight expense, contemporary matter which might soon become costly or not even obtainable. His successor is under a moral obligation to continue that policy; but it is a policy which, here as elsewhere, calls for sums which current income cannot be expected to supply, so long as the School adheres to the policy, from which it cannot think of departing, of considering standards only and not numbers. The endowment of the library is to-day insufficient to meet even its fixed expense, to say nothing of the supply of working capital. That the library should continue largely dependent on necessarily fluctuating tuition fees is a matter of grave concern."

Further, if the library is to continue to live the vigilant life it has usually lived heretofore, it must also grow rapidly in new directions. A later chapter shows how

the creation of a great body of law outside the courts through administrative boards, and the increasing connection between law and other social sciences, are making new demands upon legal education. These demands must be met by books as well as by teachers. Opportunity knocks at the door of the Harvard Law School. The efforts making to open the door are explained in another place; the present question is, shall the door lead into well-furnished apartments? It is a commonplace that the lawyer is dependent upon books as no other craftsman. A great literature about these new aspects of the law has already grown up. To name one branch of it only, the printed reports of the various transportation commissions whose decisions are law and whose annual reports, if not law, contain the stuff whereof the law is made, probably number well over a thousand volumes. Modern developments cannot be understood and cannot be guided without access to this literature. The School must collect it at whatever expense of time, money, and space. Much has been collected, but there should be no pause. And after all, the reports of the transportation commissions are only an example of the new demands in this kind that are made upon the library and that must be met if the library is to continue to be a good workshop, the best of workshops, we like to think, for the training of the mechanics who have our future in their hands.

The conclusion is inevitable that the library should be adequately endowed, and soon. Otherwise it must forego all its more generous aims; indeed, it cannot long continue to fulfil, even tolerably well, the purposes of its existence.

## CHAPTER IV

### PORTRAITS AND PRINTS

THE School is fortunate in possessing a large number of portraits and prints which convey to the students the personality of past teachers, judges, and lawyers more vividly than printed books. The paintings cannot, it is true, offer any Copleys or Stuarts like those in Memorial Hall and the College Library, but they include one pre-revolutionary portrait, several good examples of the early nineteenth-century artists, and work by leading men of our own time. Still more noteworthy are the color prints and engravings, over a thousand in number. Harvard Law School has, so far as can be ascertained, a larger collection of engraved portraits of judges and lawyers than exists anywhere else in the world.

The portraits of the founders of the School and the older teachers, before the introduction of the case system, are hung in Austin library. Perhaps the most interesting is the large group of Isaac Royall and his family, painted in 1741 by Robert Feke of Newport (1705–1750), an American primitive whose works are very scarce. This is the earliest of his portraits known to exist which can be definitely dated. Feke was a sailor in early life, and received his artistic training while a prisoner in Spain. Near Royall is Nathan Dane, and just beyond him Asahel Stearns. The head of Joseph Story is by William Page (1811–1885), who, oddly enough,

began life in a law office, but became a pupil of Samuel F. B. Morse and did some remarkable work. Simon Greenleaf was painted in London by G. P. A. Healy (1813–1894), whose portraits were so numerous that he lost count of them himself. He probably painted more distinguished sitters than any of his contemporaries, but his work is not considered so good as that of Page, Harding, and Jarvis. The three great teachers of the Civil War period — Parker, Washburn, and Parsons — have been placed side by side near the entrance of the library. Besides men connected with the School, the room contains a full-length of Webster, by Joseph Ames of Boston, and another of Marshall, by Chester Harding (1792–1866). Harding was a backwoodsman, six feet three inches tall, who entered art by way of house and sign painting. One day he attempted a portrait of his wife with his sign-painter's materials, and was so delighted with the result that he started for Paris, Kentucky, set up as a portrait painter, and in six months executed nearly a hundred heads at twenty-five dollars each. During his career he portrayed most of the leaders of the country, from Daniel Boone to General Sherman. The head of Story in Austin North is also by Harding. At the end of the library is a full-length of Rutherford B. Hayes of the Class of 1845, by William M. Chase (1849–1916). The finest portrait in the room is of Henry Wheaton, by John Wesley Jarvis (1780–1834), who started as an engraver and maker of silhouettes, and became an erratic painter famed as a diner-out and teller of amusing stories. A Bohemian and fond of notoriety, Jarvis "wore a long, fur-trimmed coat, and a couple of huge dogs followed him, sometimes carrying his market basket. To his southern friends, when they passed through New York, he showed a lavish hospitality — banquets where all fluids were obtainable save water, where canvas-backs were eaten with broken-handled knives and one-tined forks, and

the soap was thrown out of the shaving mug to furnish an extra glass." Much of his work possesses an elusive quality, envied by his contemporaries and even by later artists, and the youthful Wheaton is full of vigor and promise, more alive than any other figure on the walls of Austin.

The portraits of the teachers under the case system hang in Langdell library. Those of Christopher C. Langdell, Jeremiah Smith, and John C. Gray are by Frederic P. Vinton (b. 1846), and given by the Harvard Law School Association; that of Langdell is considered especially good. James Barr Ames and James Bradley Thayer were painted by Robert Wilton Lockwood (b. 1861). The portrait of Ames was presented by students of the School during the years 1902–1903, and that of Thayer by his pupils. There is also a portrait of Thayer by his nephew, Simmons, in Austin West. The portrait of John H. Arnold, the librarian emeritus, by E. C. Tarbell, is a gift from the Harvard Law School Association, which, in the words of Dean Thayer, "has doubly enriched the School by a work of artistic excellence and a skillful likeness of one to whom it owes a large debt of gratitude." Ezra Ripley Thayer himself is beside his father, as he would have wished, bringing to mind his frequent thought that he was carrying on his father's work. This painting is by I. M. Gaugengigl (b. 1855), and is a replica of one in the possession of Mrs. Thayer. It was presented to the School by five friends of Dean Thayer: William Rand, Jr., William H. Dunbar, William G. Thompson, George R. Nutter, and Charles E. Shattuck. Those who knew Mr. Thayer receive the immediate impression that the man himself is once more before them.

In addition to the oil portraits of its teachers, the School possesses etchings of John C. Gray and Samuel Williston, and several engravings of Story. These are

hung in Langdell South. An excellent photograph of Dean Ames, given by his family, is placed at the head of the stairway, where it is seen by all who enter Langdell Reading Room.

Mention should also be made of the oil portrait of Sir Edward Coke in the Cartoon Room, a copy from the painting in the Inner Temple, and of an admirable representation of Lord Chief Justice Holt by Sir Godfrey Kneller, now hung in the Reading Room. Besides its intrinsic importance, this picture is interesting because it was bought with a legacy to Jeremiah Smith from his friend Mr. Justice Charles Allen of the Supreme Judicial Court of Massachusetts, which Judge Smith generously presented to the Law School.

Besides its oil paintings the School has a remarkable collection of prints, interesting for their artistic qualities as well as for their legal associations. They are distributed through the various lecture rooms, but a card catalogue is kept in Langdell Reading Room indexing each print by the name of the subject or person portrayed, and indicating in what room it is hung.

Austin North contains portraits of Judges of the King's Bench, including the Bartolozzi Mansfield after Reynolds. Other Common Law Judges are placed in Austin West, while Austin East is used for the Scotch, Irish, and Colonial bench and bar. This room contains amusing prints of Scotch advocates and an autographed letter from Daniel Webster. Readers of Stevenson's "Weir of Hermiston" will find here an engraving of the hanging judge, Robert MacQueen, Lord Braxfield, whose habit it was, when consulted as to the advisability of a criminal prosecution, to say, "Bring me the prisoners, and I will find you the law."

Langdell Center is given over to the Chancellors, some in red outline by Bartolozzi after Holbein, Nottingham and Bridgman in woodcuts, and others in steel engravings.

Over the door hang two writs of the time of Charles II and George II.

In Langdell South are American judges and lawyers, with several etchings of Lincoln, interesting prints of Webster, Judah P. Benjamin in the wig of an English barrister, and a very good etching of Wheaton made much later than the portrait by Jarvis. In this room are also hung a letter from John C. Gray on his retirement from teaching, Nathan Dane's appointment by Samuel Adams as Judge of the Court of Common Pleas of Essex County, Massachusetts, Fillmore's appointment of Benjamin R. Curtis of the class of 1832 as Associate Justice of the United States Supreme Court, and a trial memorandum in Lincoln's handwriting.

The walls of Langdell North are perhaps the most interesting of all. Here, besides engravings of many English lawyers, including Jeremy Bentham, who never tried but one case, and on losing that decided to remake the law — and did it, are etchings of the Temple and other Inns, colored prints of the old English courts and prisons, "The Country Attorney and his Clients" by Walker after Holbein, John Wilkes, flanked by two associates, and many other large engravings, such as the trials of Queen Caroline and Bainbridge, the Warden of Newgate, accused of cruelty to the prisoners.

Upstairs, off the Reading Room, is the delightful Cartoon Room, full of over three hundred caricatures from "Vanity Fair" of English judges and statesmen, as well as several Americans, including John Hay, and Charles Sumner of the class of 1834, who is entitled "The Massive Grievance."

Already a great storehouse of prints, the Law School ought to become in time a gallery of Anglo-American legal history. Much remains to be done, however, before this purpose approaches fulfilment. In some fields little has as yet been accomplished — for example, auto-

graphs. The American portion of the present collection is markedly inferior to the English, and there is opportunity for the addition of portraits, views, and documents, which will serve as a continuous illustration of the development of American law.

## CHAPTER V

### THE STUDENTS

A CLIMB up the stairs of Langdell Hall; step through the library to the Secretary's office; the unrolling of a college diploma; a signature on a card, — and the college boy starts to be the professional man.

Student Activities

"An exaggeration, to be sure. The law student, like the law itself, develops slowly. But occasionally, as in a decision of Lord Mansfield, the law bounds ahead regardless of precedent. Comparable to this is the effect upon the entering student of registration in Harvard Law School. Within a few weeks former mental habits of leisurely college days are effaced. He soon acquires a deep seriousness of purpose, a live intellectual curiosity, something entirely different from his past experience in the art of being educated.

"This prevailing spirit of work is the very gist of the Law School, and merits first notice in a discussion of the School as it appears to-day from the student's viewpoint. Everything else in his life at Cambridge is corollary, and few escape its grasp from the very start.

"Why does the Law School possess this faculty of making its students, for the first time in most of their lives, really desire to study, and what is more, be proud of that desire? The causes are many. In spite of a perhaps all too utilitarian undergraduate course, the student now finds for the first time something of definite

LANGDELL HALL

Built about 1906. The right wing contemplated by the original plan has not yet been built. It will be added when the necessary funds are available. This building contains the bulk of the library with adjoining reading rooms, lecture rooms, and the offices of the Faculty.

use to his future professional life. The joy of competition with some of the best graduates of one hundred and forty different colleges whets an appetite already sharpened by the fear of the approaching Ides of August, when report slips will drop from the ranks approximately one-third of the class who were not hungry enough, or who had not capacity enough, for study. Added to these causes is the social force of the tradition of the School. Somehow or other, studying is and always has been *the* thing to do. It is strictly *comme il faut*, as athletics, fraternities, or what not, were at college.

"While all these factors may contribute to produce the electrifying Harvard Law School atmosphere, the crowning cause is the law itself. For although, as old Lord Coke used to say on the title page of Ames' Cases on Pleading, the law may be a 'jealous mistress,' her jealousy need not often be aroused. The law is a very attractive person, 'as she is taught' at Harvard, introduced to the student by professors who command his highest respect and clad in the very latest of case-system garbs. He sticks to the law for long hours at a time from sheer enjoyment of her company.

"Indeed, the Law School acts *in personam*. It affects the conscience of the entering student. The result must be amazing to one who, after listening to contemporary critics, pictures the American college student as irresponsible and rah-rah, a spendthrift of opportunity and patrimony. The Harvard Law School is different. Its students, not content with the allotted lecture hour, usually pick the very bones of what, to the outsider, might seem a dry and already thoroughly masticated legal morsel, by congregating about the lecturer's desk in large numbers, asking questions, and arguing well into the next period. Outside the law buildings not only are the workers' backs occupied with carrying to and fro green bags stuffed with books, but their minds and tongues

are busy arguing and talking law points with fellow classmates. That center of persiflage, the college dining table, has given way to a prandial and post-prandial forum, where 'pass the bread' is smothered in questions about what the Dean said in the last lecture and disagreements as to why the House of Lords was wrong in some case just studied. The School is a veritable teachers' paradise in which discipline consists solely in advising the student not to work so hard. A School of 'grinds,' the outsider may contemptuously remark. Not so. The work, while serious, is not of the drudgery type depicted in the current anti-child-labor cartoons. On the contrary, it is set to a cheerful and lively tempo.

"There is no doubt that the law man at the School to-day works, but how does he work and what are his methods? How does the case system seem from his viewpoint? He is little interested in its scientific character or its pedagogical value. That is the view of the landlords of the system. He is the invitee upon the case-system premises, who, like the invitee in the reported cases, soon finds himself fallen into a pit. He is given no map carefully charting and laying out all the by-ways and the corners of the legal field, but is left, to a certain extent, to find his way by himself. His scramble out of difficulties, if successful, leaves him feeling that he has built up a knowledge of the law for himself. The legal content of his mind has a personal nature; he has made it himself. This independence and resulting self-confidence is the biggest thing in his life as a student. Although he cannot merely stick in his thumb to draw out a plum of legal knowledge, the greater effort has its compensation. Indeed, the independence developed is remarkable. Jones, Law 1, after a month or so, boldly asserts that the nine Justices of 'the greatest tribunal in the world' are absolutely and unanimously wrong, or that his professor, who perchance is the author of a

standard text or two, and a number of authoritative monographs and has had years of experience at the bar and in the School, is clearly mistaken in his view of this case or that legal principle.

"The notebook is the principal tool of the student. In this he writes the abstracts of the cases assigned for the day's work, what the lecturer says, and the questions and answers of those attending. In the review which starts about the first of January in contemplation of the June examination, many additions and corrections are made. The entire notebook, or portions of it, are often abstracted or summarized. Notes concerning cases or legal articles, to which reference was made in the class, are inserted; occasionally even a few words are embodied from some disdained textbook with which the notebook owner has aided his review. To be sure, the notebook is often allowed to take the place of the student's mind, and from the careful underlining and the different colored inks used in the review, it might seem in some cases that the maker was best suited for the course in Landscape Architecture. But more often the notebook is a servant and not a master. The reviewer uses his own ideas afresh and jots down questions concerning matters that he does not understand or with which he disagrees. These questions he tries to straighten out by talking or reviewing with his fellows, by reading additional cases or texts, and by conferring with his professors.

"No doubt the student's ideas of the law are often as verdant as the green eyeshades he affects in the law library. A particular course he receives at first merely in blocks. But later in the year these blocks seem to fit together into a whole. So the separate courses likewise, at the end of three years, are seen more or less as parts of a greater legal structure. What is more important, because he has learned each little part of the whole, not merely as something which is the law but as some-

thing which ought, or ought not to be the law as he himself feels it, the body of the law is to him something living. His future professional work is to be no mere skillful piecing together of static precedents, — in fact precedents, if anything, are too lightly regarded. Legal problems are to be viewed rather in the light of reason and justice.

"This attitude toward the law, present among the students no doubt for many years, is especially important as the basis of a development of more recent times which has culminated in the appointment of Dean Pound; *viz.* emphasizing the need of the law to fit itself to modern ideas of social justice, and to the present demands of complicated industrialism. This new tendency at Harvard is in some respects the opposite from the 'back to the farm' movement in other spheres. The problem is: Can the student be made to believe in a judicial system less pastoral and individualistic than in the past? The task is difficult. There is naturally a certain narrowness about legal study, a tendency to weigh questions of right and wrong and logic, bereft of their bearing upon present-day human affairs. With the exception of a few mechanical radicals among the students who question and deny everything from the start, at the beginning of the course most questions that come up are dealt with upon an assumption of the underlying principles as axiomatic. Before the first year is over, however, the study of some parts of Criminal Law and the trade disputes portion of the course on Torts has begun to awaken the student in many ways. Later work, especially in such courses as those dealing with Public Utilities, Administrative Law, and Constitutional Law, and to a lesser extent in the others, continues this broadening influence until often a discussion among the students, inside or outside of class, savors much of economics and sociology. Different men react upon this differently. Radicals and reactionaries develop. But whatever view prevails

as to the shade of the blots upon the escutcheon of the Common Law or the luster of the proposed jewels for the crown of the social republic, the net result among the students is a growing realization of a needed adaptation of the law to present-day conditions.

"Work at the Harvard Law School is by no means limited to what the curriculum prescribes. It is supplemented by a number of outside activities, all related, however, to legal training. The one of these which is the most important because it affects the largest number is the Law Club System. There are at present some thirty clubs in the School, composed of approximately twenty-four men each, — a 'Court' of eight from each class. Upon these clubs being mentioned, a member usually hastens to explain that the name 'Club' is a misnomer, but this is not entirely true. Although the members are usually chosen somewhat at random and without regard to social attainments, and their primary purpose is work; nevertheless at the weekly meetings and annual dinners quite a bond of fellowship grows up from the pleasure of interesting and congenial work, — much more than in the ordinary debating or literary society. The first year men in these law clubs argue against each other, within the club, cases based upon statements of fact prepared by one of the third year men or occasionally by Boston lawyers or members of the Faculty. The remainder of the club sit as Associate Justices, with the originator of the facts acting as Chief Justice, question the contestants, and render the final opinions. By this means the first year men soon gain a knowledge of the use of a law library and have practice in the preparation of briefs and the presentation of arguments. Inasmuch as the Board of Advisers, composed of a half dozen or more third year men appointed by the Faculty, have supervision of the questions argued, and pass upon the briefs, a fairly high standard is main-

tained, although some of the supposititious cases are more fantastical than usually occur on land or sea. The second and third year men enter upon the Ames Competition, in which similar arguments upon more advanced questions take place between the different clubs. The final round of this competition between the two clubs having the highest record often produces as much excitement as a yellow-journal-advertised murder trial, several hundred students attending.

"Then there is the *Harvard Law Review*. From the standpoint of the subscriber or reader, no doubt its value consists in its leading articles contributed by those far more learned and advanced in the law than the members of its Editorial Board, and also in the fact that its notes call attention to important recent decisions. This is only partially its value to the student. Of equal interest to him is the competition in scholarship upon which election to its Board almost solely depends; and to those upon whom the honor — or rather task of editing it — falls it affords an experience greater perhaps than all the rest of the course at Harvard. The *Harvard Law Review* Board consists of twenty-five or thirty men who act free of faculty control, although advice and the greatest assistance is obtained from frequent conferences with the professors. The Board from month to month reads every new reported decision of all the Common Law courts of the world. Selected cases are discussed in meetings, and eventually those that seem the most important or interesting are commented upon in the *Review*. Considerable research is required of each editor to whom a case is assigned, and of the President and his assistants, who correct and revise the editorial when written. The seriousness of the writers and their independence of the thought is typical of the same spirit through the School. Decisions are attacked as though the unhappy courts which rendered them would immediately reverse them-

selves upon reading the editorials. The realism of it all, the freedom from precedent, the attempt to mould the law as it ought to be, — these are things that the editor cannot but look back upon without regret in future years of practice, when his mind must follow a tortuous course among impeding state reports, guided always by expediency in his client's interest.

"The Legal Aid Bureau, a more recent acquisition of the Law School, affords experience of a practical kind to many men who do not have the advantage of the *Law Review*. In the Bureau's office at Central Square, Cambridge, the men take turns at office hours and give legal advice and aid to those who cannot afford to pay an attorney. In this way the School is of a certain use to its immediate community, and the men, in handling cases in and out of court, rub up against actual conditions.

"To complete the picture of the Law School, a word must be said about its social life, which is free for the most part from the other departments of the University. The Law Club banquets, and the Class Smokers and Dinners, bring out this side of the student to the greatest extent. Here the professors meet with the men on a basis of equality, or perhaps inferiority, in that they find themselves the butt of the jokes and songs. Some of these Smokers have developed into quite elaborate affairs, in which the talents of the students have brought out an indigenous type of humor peculiar to Harvard Law School.

"It is not the purpose of the writer to enter into a criticism of the School from the student's viewpoint. But of course, it is not in all respects perfect. One finds the classes too large, a certain amount of clannishness, especially in the first year, among the graduates of the different colleges, and a dissatisfaction with the way this course or that course is taught. All this is but natural. It is better to have the classes too large than to have added to the Faculty any but the best instructors; for although

much is left to the students' own work, the success of the case system and its dialectic methods is entirely due to the excellence of the professors the School has and has always had in its service.

"Some students feel that the course is not practical. In a sense the graduate is better prepared to present a case before a learned Appellate Court than to enter a hand-to-hand tilt with some ignorant but stubborn Justice of the Peace; more able to write a complicated brief than to draw a chattel mortgage. But moot and practice courts and the like are at best makeshifts. The final making of the lawyer depends, as in the days before law schools, upon the law office itself, in which most of the graduates spend at least a year's apprenticeship. What is more important, the graduate finds himself the possessor of a legal mind, developed to a considerable extent, the content of which is not a store of cut-and-dried rules, learned by rote, but a living body of principles, each of which has passed the test of his own reason and sense of justice. With the increasing emphasis placed upon modern social and economic conditions and their relation to law, the graduates must be far between who are on the road to becoming lid-sitters or technical pettifoggers.

"It is with some confidence and considerable joy that the graduates set out upon their future work, not merely as lawyers, but also as citizens."

This statement of student life of the present day, written by a recent graduate of the School, offers a vivid picture which may be compared with the less elaborate sketch of a student's life fifty years earlier. "He took part in the discussion of Parliament, where political discussions were debated Friday nights; he belonged to various law clubs; he helped Professor Washburn prepare a new edition of his Law of Real Property, and worked for Professor Parsons upon more than one of his

law books. With all this hard work he found plenty of time for social life and was one of the best-liked men in the School."

The "Parliament" (at times called the "Assembly"), the debating club to which all students belonged, has long since passed away; the law clubs are still, as they were fifty years ago, flourishing institutions wherein the members discuss questions of law. The power of investigation which the best students fifty years ago gained from work on the legal treatises of the professors is now acquired on the editorial board of the *Law Review*. The social life of Cambridge is still open to students with social tastes and opportunities. But the simple activities which were suited to the placid law of the time are inadequate training for the lawyer of to-day, who must apply the complexities of a rapidly developing system of law to the intricate requirements of a highly organized industrial civilization. In these fifty years the School has grown, not merely in size but in function, into a highly individualized institution, with its own social as well as mental activities, its characteristic spirit, its common law and common life. On the intellectual side the students have their law clubs, their own legal periodical as the organ of their legal beliefs, their Ames Competition, their quiet companionship of the reading room, and the noisier strife of constant discussion in corridors and out of doors. After the discussions in the law clubs are finished for the year the "review sections" begin to occupy a large part of the students' time. A review section is a voluntary association of three or four men for the purpose of going over the courses of instruction. The cases are reread and stated, the class discussing renewed, errors of memory or of judgment corrected, and finally such a clear knowledge of the subject-matter of the course is obtained as the thought and study of one man alone could not give. On the social side the students

have their dining clubs and their two or three social clubs. The Law School Society of Philips Brooks House directs their altruistic activities, giving opportunities, much used, to teach classes of foreigners or of workmen; it also maintains an information bureau and conducts a reception for new students, offers classes in Bible study and holds a course of Sunday evening talks for law students by distinguished lawyers on matters of professional interest. The Legal Aid bureau places the knowledge and the time of the older students at the service of the poor of Cambridge, and incidentally gives to the students themselves a desirable experience in handling clients and their woes. Each of these activities is worth a further word.

Class spirit has in recent years grown up, and since 1887 each graduating class has elected a secretary and other officers, and the periodical reports of the secretaries have been valuable in keeping the graduates acquainted with one another in later years. In 1889–90 the School issued its first Quinquennial Catalogue, with a complete list of all former students, and this has been followed by five successive issues, the last in 1914.

**Character of Students**

The cosmopolitan character of the students has already been pointed out. During the entire history of the School they have been drawn from all parts of the country. For a considerable part of its history the men from outside New England have far outnumbered those from the New England states.

During the greater part of its history the School has had a large proportion of college graduates among its members. In the first five years of the School 81 % were college graduates; in the first five years of Story's administration they formed 75 % of the whole number; but from 1851 to 1855 inclusive only 62 %, and immediately after the war less than half of the class. From

1870 the percentage steadily increased. In 1871 it was 51%; in 1881, 61%; in 1891, 69%; in 1896, at the beginning of Ames' deanship, 80%. As a result of the graduate rule it became 92% in 1900, and since 1905 not more than one or two students have lacked a college degree.

The number of colleges represented among the graduates has also steadily increased. In 1874 only 18 colleges were represented in the School. In 1889 there were 41; in 1892 there were 54; and the number increased rapidly to 74 in 1894 and 82 in 1895. In 1901 there were 92; in 1903, 111; in 1906, 126; in 1910, 135; and in 1911, 145. The number in 1916 is 153.

In the year 1886, eight students of the third year class formed an organization called the Langdell Society for the serious discussion of legal topics and for other serious work on law. Two of the members prepared essays on points of law, which were afterwards published in legal periodicals. The group also conducted a series of trials of fact which proved interesting as well as amusing, but the great service of the short-lived Society to the School was in the establishment of a *Law Review*. Mr. J. J. McKelvey, one of the members, ran across a copy of the *Columbia Jurist*, a periodical published for a few years by the students of the Columbia Law School. It occurred to him that the Harvard Law School could support its own legal periodical, and he suggested this to the members of the Society. Six of the eight members undertook to join with him in the plan and two others were added from the class. Mr. J. W. Mack was chosen business manager and the eight editors of the third year class proceeded to canvass the Boston alumni of the Law School for support of the magazine. Reasonable success having been attained in this line, and editors added from the other two classes, the first number

was published in April, 1887. The Faculty were invited to take an active part in the management, but thought "that the interests of the paper would be more advanced by their remaining in the background."

Although the idea of the magazine was taken from the *Columbia Jurist*, its form and its character were more like those of the *American Law Review* in its earlier days. Leading articles were followed by notes and other editorial matter. Mr. J. H. Wigmore suggested the digest of recent cases and being given charge of that department, originated a kind of editorial work which has since been followed in all later periodicals. Departments of lecture-notes, imitated from the *Columbia Jurist*, and of reports from the moot club courts were soon discontinued, as the magazine was found to make a broader appeal than merely to the graduates of the Law School.

The *Review* met with a moderate degree of success for a few years, until the Law School Association came to its help by entering a year's subscription for each of its members. This resulted in a large, permanent increase in the subscription list and consequent prosperity for the Review. When a considerable surplus had been earned, it was decided to put it into the hands of permanent Trustees, and Professor Ames, Mr. L. D. Brandeis, and Mr. G. R. Nutter were chosen Trustees.

In the fifteenth year of the *Review*, the Board awoke to a realization that they were no longer editing a "college paper," but a periodical for legal scholars and practicing lawyers. A complete reorganization of policy and methods took place. The somewhat unsystematic collection of material was abandoned. First year men were no longer elected. The editors were increased from fifteen to thirty, eighteen in the third year class and twelve in the second year. The criterion of choice has always been ability, largely as evidenced by marks.

The system evolved in 1902 has continued with few

changes until the present time. The Board is officered by the President, Treasurer, and Editors of the three departments,—Notes, Recent Cases, and Book Reviews. The selection of leading articles is entirely in the hands of the President, who calls upon members of the Board for advice from time to time. These articles are contributed by prominent legal scholars in all parts of the world.

The Departments of Notes and Recent Cases are written in the following manner. Advance reports from every common-law court of any importance, and the chief legal periodicals, are distributed among the editors about the twentieth of the month. Each editor reads through the reports assigned to him, marking any cases which seem interesting because of the importance of the decision, the doubtful reasoning of the court, or some striking peculiarity of the facts. The standard of selection is the interest of the point involved to the profession in general.

About three or four days later the case meeting is held. This is generally divided into two sessions, one in the afternoon lasting from two till six, and the other in the evening from seven till the work is finished. Part of the board attend in the afternoon, and the remainder in the evening. At the meeting each editor gives a short abstract of the cases he has "saved." The value of the case for publication is then discussed by the board, led by the President and Case and Note Editors, and if it is thought worthy in the final judgment of the President it is "kept" for further consideration. As an additional means of collecting interesting cases, the *Review* has, in many jurisdictions, a "case reader," a lawyer of experience, practicing in that jurisdiction, who notes the important decisions of its courts and communicates them to the *Review*. The cases thus submitted are examined by the President and either "kept" or discarded.

The cases which are "kept" at the case meeting and otherwise are assigned equally to the editors, to make a preliminary report upon them. The "prelim" consists of a careful, concise abstract of the case, with a statement of the condition of the authorities upon the point as disclosed by a search through the digests, the viewpoint of a couple of leading texts, a listing of any recent treatment of the subject in the *Review*, and finally a short statement of the writer's opinion as to the value of the case for publication. The "prelim" writer reports the cases assigned to him to the Case or Note Editor, who discusses them with him and gets his views. The "prelim" serves two purposes. It aids the President and the Case and Note Editors in their decision as to the worth of the case, and it is often of help to the editor who finally writes up the case, should it be accepted.

The final selection is made in the light of these preliminary reports by the President, advised by the Case and Note Editors, and each decision thus sifted out is assigned to some member of the Board to turn into a Recent Case or a Note. The former consists of a short statement of the facts and the decision, followed by a concise comment upon the principle involved and the condition of the authorities, which have been thoroughly searched. Its object is to produce something of value to the practicing lawyer when he prepares a brief. The purpose of a Note is more scholarly. It is longer, and without omitting full examination of the authorities it goes more deeply into theory. Besides interesting points arising in the courts, any subject of current legal importance like a new Federal statute may be treated in a Note. Both Recent Cases and Notes are written after discussion with other editors.

The Department Editor then revises the material in consultation with the writer. If it is also satisfactory to the President it goes to press. The writer himself

reads the proof, and personally verifies each citation from the original report.

The increasing circulation of the *Review* under the new policy created a serious problem. The earliest numbers had been printed from type and the edition soon became exhausted. After a few years it was therefore necessary to reprint it. From that time all the current numbers were electrotyped and earlier numbers were from time to time reset and electrotyped. This process was finally completed in 1912 and, in honor of the 25th anniversary of the *Review*, a complete edition at a reduced price was issued. The publication of this edition exhausted the entire reserve fund in the hands of the Trustees, but the successful sale of the edition has much more than replaced the amount.

The contributors to the *Review* are unpaid. The routine work is done by hired clerks, but the editors receive no monetary remuneration, nor is any scholastic credit given by the School. The training received is regarded as well worth the cost.

The problem of how much time and effort to devote to training students in the machinery and methods of court practice has been a difficult one. The courses in New York and Massachusetts practice have been already described. Experience has proved that it is not worth while to spend the time to reproduce trials of fact before a jury or to require an extended study of procedure, the forms of which vary so much in the different states; and it has been a source of satisfaction that the fascination of court practice has not led students to seek more half-effective training in the practice side of the law at the expense of the lasting benefits of a thorough grounding in legal thinking. Very great benefits have been derived, however, from experience in the preparation of briefs and the presentation of

The Law Clubs

oral arguments before a judge or a court of appeal, and it is here that efforts have been made and results achieved.

In the early days of the School a moot court was a part of the regular curriculum and apparently was intended to be as nearly like an actual court as possible. This was under the direct supervision of the Faculty, and while the School was small there was no great difficulty in carrying it on, but as the numbers grew, it became a very great burden on the Faculty and it was almost impossible to give any considerable portion of the students an opportunity to argue the cases. The students began to lose interest, and furthermore a number of law clubs had spring up which served substantially the same purpose.

Almost from the beginning of the School the students formed clubs for the informal discussion and formal argument of questions of law. The clubs have differed somewhat in the scope and intensity of their activities, but the general character has not varied much. At present each is composed of three courts, eight men from each class forming a court. The men of the upper classes act as chief justices for the arguments of the lower class courts. Each first year court has twelve arguments during the academic year on questions of law in the subjects studied during the first year. The judge who is to preside determines upon an agreed statement of facts upon which the legal question arises. One man argues on each side. Those members of the first year court who are not arguing act as associate justices. There is careful preparation by counsel, briefs are filed, and after the oral arguments each justice gives a separate oral opinion. The number of similar arguments in the second and third year courts varies in the different clubs. These clubs were at the beginning and have continued to be the result of the spontaneous enthusiasm of the students, and it has become a tradition in the School that the training

afforded by the law clubs is a most important addition to the curriculum, and worthy of much time and effort.

The first law club, the Marshall, was started about 1825 and was active until 1870. During this period several others came into existence and were more or less thriving, but the time of great growth and activity did not begin until after 1870, about the time of the rise of the "case system." The Pow Wow club, which was long the most prominent in the School, was started about 1870. Others rapidly followed; but while the moot court continued to be at least an elective part of the curriculum no efforts were made by the Faculty to increase the number of law clubs or in any way to supervise them. The three or four most prominent clubs selected the ablest men in the class, and sometimes even drew men away from the newer and less important ones to fill vacancies. Membership in one of the best clubs was a substantial honor. The first period of great activity lasted from 1870 to about 1897; new clubs were continually springing up during this period, and the interest taken by the students was keen.

The moot court was finally abandoned in 1897, and the problem was then faced of giving every student a chance to argue cases if he so desired. In order to solve this problem the Faculty took an active interest in helping the students to form enough new law clubs to take in all men who were not chosen by the older organizations. Where there had been but ten clubs before 1890 there soon were more than twenty.

It became less and less true that the ablest men were all in a few of the oldest clubs. While the interest thus became more widespread, it was perhaps not so intense as it had been. Furthermore, the growth of the *Harvard Law Review*, membership in whose editorial board was becoming a goal of student ambition, naturally took a great deal of the time and interest of some of the best

men. These factors did not at first have any substantial effect in reducing the activity of the law clubs, but as early as 1900 a decline in the interest in arguing cases in the second and third year courts was apparent. This was by no means universally true, some clubs retaining their best vitality; but by 1910 it was generally felt that although the first year men were still kept busy, the law clubs were by no means so valuable as they had been. This was the low ebb. With the institution of the Board of Student Advisers and the Ames Competition, the tide turned.

On March 8, 1910, the Faculty passed the following vote, establishing the Board of Student Advisers.

The Advisers

"*Voted:* that throughout the academic year 1910–11 additional provision shall be made for encouraging among first year students early and intelligent use of the law library and also for rendering the work of the law clubs efficient; and that to this end there shall be appointed six advisers, being students of at least two years' standing in 1910–11, and that the duty of each adviser shall be (1) to explain to all inquirers the arrangement of books in the reading rooms, the scope of digests and of other works of reference, the mode of finding authorities upon any question stated to him, and the arrangement of briefs for club courts; (2) to keep until the end of May two office hours each week in the reading room of Langdell Hall at a table to be assigned; (3) to serve on the Committee on Law Clubs and, if requested, to sit as justice twelve times for clubs of first year students; and (4) to spend in addition twelve hours yearly in other work to be determined by the Law Faculty."

The number of the advisers is now eight. They have entire charge of the work of the law clubs and of the Ames Competition. Each adviser has a certain number

of clubs under his direct supervision and encouragement. The system has been found to furnish an excellent means of communication between the student body and the Faculty. By their formal reports and by informal conferences they keep the Faculty informed of the needs and desires of the students, and interpret to the students the principles of faculty action.

The first chairman of the Board was Claude R. Branch (1910–11). His successors were James B. Grant and Lawrence G. Bennett (1911–12), Zechariah Chafee, Jr. (1912–13), Harvey H. Bundy (1913–14), Chauncey Belknap (1914–15), Spencer B. Montgomery (1915–16), and Joseph Nye Welch (1916–17).

The Ames Competition

In 1910, after the death of Dean James Barr Ames, Mrs. Ames, in fulfilment of a wish expressed by him, gave the sum of $10,000 for the benefit of the Law School. There was no restriction contained in the gift, — the income was to be applied annually to any purpose which the Faculty might deem beneficial to the Law School.

Dean Ames always took keen interest in the work of the law clubs formed by students for the argument of moot cases, and had been lavish of his time and strength in encouraging their activities. The members of the Faculty were unanimous in believing that the activities of these clubs should be encouraged, and that it was appropriate to use income accruing from Mrs. Ames' gift in giving prizes for excellent work done in the law clubs.

On May 2, 1911, the Faculty voted that two prizes of $200 and $100 respectively be given in each year, until otherwise ordered, to the winners in a competition between law clubs formed or to be formed by students of the School, such competition to be subject to certain regulations.

Experience had shown that students were usually

keen about work in law clubs in their first year, but that their interest was less in the second year. This was due, in part at least, to the fact that throughout the first year it remains quite uncertain what men will rise to the surface and prove to be the cream of the class. The man is rare who, upon entering the Law School, would consider it beyond the range of reasonable probabilities that he should so rise to the surface. Since work in the law clubs is recognized as an important aid to a student's development, most first year men are eager to share in the benefits. After the members of the Faculty have, through the marks upon the examinations at the end of the first year, given to the students an external estimate of their legal capacity, a good many, even among those who passed the examinations, are disappointed at finding themselves rated so low. It is hard for them to take the same interest in their work, particularly in the work within the law clubs, participation in which depends entirely upon their own volition. As a whole, the men who are disappointed at the results of the first year rally well, go at their work again in grim determination, and the records of the School show many instances where such men have effected substantial improvement in their standing in the second and third years.

These considerations moved the Faculty to frame the regulations governing the Ames Competition so that the prizes should be awarded for work done by students in the second year. The first year work is indirectly affected, however, because under the regulations no second year club can compete unless it has had a creditable record as a first year club.

The competition itself was an elimination tournament. The advisers, subject to the approval of the Faculty, framed moot cases for argument. At each argument two representatives of one club were opposed by two representatives of another club. No representative of a club

could argue more than once, until at least six men from the club had argued. The judges were to be selected by the competing clubs, or to be assigned by the advisers. In the final round there was to be not less than three judges. The judges in making their awards were to consider the ability shown in the preparation of briefs, in presenting arguments, in accurately and succinctly stating the authorities cited, and in meeting questions put by the court during the argument. The advisers were to regulate the competition in all matters not specifically provided for in the regulations.

In the year 1911–12 twenty-one second year clubs entered. The moot cases were framed on points relating to the work of second year men. The first prize of $200 was won by the Choate Law Club, represented in the final round by M. M. McDermott and M. C. Lightner, and the second of $100 by the James Bryce Law Club, represented by Marvin C. Taylor and T. Justin Moore. The judges in the preliminary rounds were two third year students and either an attorney at the Boston bar or a professor in the Law School. The judges in the final round were Hon. Henry Newton Sheldon, of the Supreme Judicial Court of Massachusetts, Dean Thayer, and Professor Edward H. Warren.

In the year 1912–13, the competition continued under substantially the same regulations. Twenty-four second year clubs entered. The first prize was won by the Beale Law Club (W. H. Greenleaf and Jeff Myers), and the second by the Bruce Wyman Law Club (H. J. Brandt and P. D. Wesson). The judges were Hon. Frederic Dodge, United States Circuit Judge, Professor Eugene Wambaugh, and Arthur D. Hill, Esq., of the Boston bar.

In 1913–14 the faculty decided that the prizes should be given, not in money, but in books, in which special name plates should be inserted. Twenty-four second year clubs entered. The first prize was won by the

Kent Law Club (Montgomery B. Angell and Chauncey Belknap), and the second by the James Bryce Law Club (Julius H. Amberg and Clarence B. Randall). The judges were Hon. William Caleb Loring, of the Supreme Judicial Court of Massachusetts, Dean Thayer, and William G. Thompson, Esq., of the Boston bar.

In 1914–15 the regulations were substantially changed. As the competition was an elimination tournament, one defeat put a club out. This was thought to be undesirable. The added interest given to the work of the second year clubs by the Ames Competition was short-lived for many clubs. Moreover, as each club was composed of eight men, it made too much depend on the work of the first two men who represented the club. The competition was therefore changed so as to consist of a qualifying round robin tournament of six rounds, each competing club to take part in six arguments; and an elimination tournament to be argued at the beginning of the third year by the clubs that had qualified during the second year.

In 1914–15 twenty clubs entered the qualifying tournament. Four, the Kent, Marshall, Moody, and Westengard clubs, qualified for the elimination contest the next year, in which the first prize was won by the Kent (F. L. Daily and H. A. Scraggs), and the second by the Marshall (E. O. Tabor and M. V. Rinehart). The judges in the final round were Justice Loring, Hon. James Madison Morton, Jr., United States District Judge, and Hon. Charles Thornton Davis, of the Land Court of Massachusetts.

In 1915–16 seventeen clubs entered the qualifying tournament, and seven of these qualified, the George Gray, Lowell, Kent, Thayer, Warren, Williston, and Witenagenot. The elimination tournament next year was won by the Lowell (Alvin C. Reis and Conrad E. Snow), and the second prize by the Witenagenot (Leon-

ard M. Rieser and Urban E. Wild). The judges were Justice Loring, Justice Dodge, and Justice William H. Sweetland, of the Supreme Court of Rhode Island.

In the main reading room in Langdell Hall is a tablet upon which are inscribed the names of the victorious clubs and their members. The briefs in all Competition cases are collected, bound, and preserved in the Library. Copies have several times been made for members of the bar engaged in litigation upon similar points of law.

Harvard Legal Aid Bureau

In 1913 the Legal Aid Bureau was formed, as part of the activity of the Law School Society of Phillips Brooks House; it is now an entirely independent organization. It offers some of the older students an opportunity of engaging in welfare work while at the same time they acquire professional experience often more enlightening than can be gained in the specialized practice of the modern city office.

The Bureau has a consultation office in the building of the Prospect Union, in Cambridgeport, where office hours are kept for four hours during each day. Clients are met, claims sifted and adjusted, and if necessary actions at law are instituted and carried through. The Bureau is incorporated, in order that it may act as attorney in fact for clients. In 1915–16 the bureau had 147 clients, instituted six suits (of which none were lost), and recovered for clients $1647.50.

The Bureau is a self-perpetuating body of twenty-seven members, who are chosen from the second and third year classes on a basis of scholarship and adaptability for the work. A board of directors, consisting of three officers and three directors, has general supervision. The board does not, except in special cases, control the details of any case. The client who comes into the office of the Bureau is the client of the member then in charge. Upon that member individually rests the responsibility

for the proper disposal of the case. Expenses are paid by contributions from students of the School. This method has proved unsatisfactory and the work of the organization has been hampered by lack of funds. It has been necessary for members of the Bureau to make advances on several occasions.

No extra-curriculum activity in a law school can justify itself except by intimate connection with the work of the School, and it cannot survive if it demands too much of the student's time. Members of the Bureau are on duty at the consultation office for two hours on alternate weeks. If the burden upon one man becomes too heavy, a portion of his cases are assigned to another. Thus a member of the Bureau is able, by the sacrifice of comparatively little time, to supplement the theory of the law with practice and to do his part in the great social service which is now performed by the legal aid societies of the country.

**Success of the Students in Practice**

The success in practice of the graduates of the School has been marked. Various class secretaries, among them Edward H. Letchworth of the class of 1905, have collected statistics showing the professional incomes of their classmates at different periods after graduation. The Secretary of the Law School, Mr. Richard Ames, made a more general investigation of the professional income of graduates of the School for ten years, and the results were published in Volume 27 of the *Harvard Law Review*. He found that of about 800 men who answered his questions the average earnings during the first year were about six hundred and fifty dollars, and that the average earnings increased by about five hundred dollars a year throughout the period. When one considers that this represents the experience of eight hundred men, the success of the graduates of the School is surprising. It is certainly a

very exceptional lawyer whose income after ten years of practice exceeds five thousand dollars a year; yet this is the experience of the average graduate of the Harvard Law School, practicing in city or country.

A college president once remarked that a law school is not an Alma Mater, but a mother-in-law. Nevertheless more than one graduate of the Harvard Law School has admitted that he was happier there than in college. Here is an educational institution with none of the emotional accessories supposedly necessary to create loyalty, unless, indeed, we except the School cheer, "Offeree, offeror, quash it, nisi, Harvard Law!" It has no campus or stadium or class day. Only once in years have its students been gathered in one room. It inspires devotion solely by its wonderful spirit of work in companionship. It is this which the alumnus remembers. Nor is beauty of setting altogether absent. Often in later years, after a hard afternoon on a brief, he will wish that he might look across Langdell Library to a classmate, and go out together for a swing around Fresh Pond, or over the hills toward Belmont, and return past "Blackacre," as Professor Gray's house was known to us, and homeward along Brattle Street, agreeing heartily with his traditional opinion that it is "the finest street in the world."

The School after Graduation

# CHAPTER VI

## THE FUTURE

IF American law to-day is compared with American law in 1817 and each is compared with American law in the last two-thirds of the nineteenth century, the analogy in the one case and the contrast in the other case suggest much with respect to the immediate future of the Law School. In 1817 economic conditions had given rise to widespread dissatisfaction with law and general distrust of lawyers. Political conditions had brought about hostility to English law. Judges and legislators were influenced by this popular feeling and an undeveloped bar was not strong enough to resist it. Moreover, the administration of justice was in large part executive or legislative rather than judicial. Divorce jurisdiction was chiefly in the legislature; legislative new trials were not definitely superseded until 1818; legislative jurisdiction in insolvency had still some years of life before it, and in more than one state appellate jurisdiction was in the legislature or in one of its branches. Furthermore, with a few conspicuous exceptions the courts were in great part manned by untrained magistrates. James Kent became Chancellor of New York in 1814, and he tells us that for the nine years he was at the head of the judicial system of that state not a single decision, opinion, or dictum of his predecessors from 1777 to 1814 was cited to him or even suggested. So completely did American law make a new start in the fore part of the nineteenth century.

Yet nineteenth-century America proved to be an age of lawyers. By the end of the second third of the century the working over of the traditional English material to make a common law for the new world had been definitely achieved. The administration of justice had passed definitely into the hands of lawyers. In nineteenth-century politics the soldier was the sole rival of the lawyer, and from De Tocqueville to Bryce observers were agreed as to the leadership of the lawyer in American communities.

In 1917, on the other hand, dissatisfaction with law and distrust of lawyers are no less marked than a century ago. Social conditions and industrial conflicts have made more than one tenet of our legal system unpopular and have roused strong opposition to the fundamental dogma of the supremacy of law. Once more judges as well as legislators are inclined to yield undiscriminatingly to a blind pressure, and an unorganized and heterogeneous bar is in no position to resist. Moreover, what is more significant, the administration of justice is passing in large measure from judicial tribunals to executive boards and commissions.

A century ago the materials for an adequate body of law were at hand in the traditional course of decision in the English courts. It was the task of the law school to make these materials accessible in a form in which they could be used, and it was the task of the courts to develop them by judicial application to actual causes. Academic exposition, enriched in the hands of Story by comparative law, played a larger part in the building of American law than has commonly been perceived. More than anything else, the books of our great nineteenth-century text writers saved the common law in the critical period of American legal history. They provided guides for judge and practitioner, well written, learned, well ordered, and, as things went then, well reasoned. With

copious references to the civil law that seemed to make it clear that the resources of comparative law had been exhausted, they stated none the less the common law as worked out in the English courts. Thus at the crucial time the common law was so presented as to make a reception of that system easy, and the energies of judges were turned to the right channel of applying common-law principles to concrete cases. Until we had a body of judicial decisions able to stand by itself such aid was indispensable. Without it, it is doubtful whether we should live under the common law to-day. As Coke summed up the development prior to his time and thus furnished the basis for a juristic new start, so these text writers, of whom Story is easily first, both in the quantity of his writings, and, on the whole, in quality, summed up English case law of the seventeenth and eighteenth centuries and made it available as the basis of a new start in America. Much that in form was the work of the courts in reality was taken already shaped from the books that represented the best work of the law teacher.

To-day also the materials for an adequate body of law are at hand, this time in the judicial decisions in the English-speaking world which set forth the experience of English peoples in administering justice in the nineteenth century on the basis of the traditional English legal thought. If the continuity of that tradition is threatened, if the rise of boards and commissions threatens a reversion to administration of justice without law, the common law is to be saved exactly as before by making its materials accessible in a form in which they can be used, and so presenting them as to make them available as the basis of another new start. Such is the first task of to-morrow for the American teacher of law.

In order to do for the law of the twentieth century what the law teachers of the past did for the law of the nineteenth century, our professors of law must be afforded

opportunity for research. No longer can they print their lectures, as given in the class-room, and in so doing give us useful textbooks for court and practitioner. The conditions of modern teaching wholly preclude this. Hence teaching and writing, much as they should go on together, are distinct processes. Nor may we overlook the importance of the latter. The stress of business in the courts of to-day compels the judges to work rapidly with a minimum of deliberation, without the elaborate argument of every detail which was possible a century ago. Thus, at a time when constructive work of the highest order is called for, the very circumstances of judicial administration preclude it. Yet more difficult questions are arising than any with which American judges had to deal in our classical constructive period — the period from the Revolution to the Civil War. Hence it is not likely that American courts will much longer be able to do more than give authoritative sanction to what has been worked out and formulated by others. Already the papers of professors of law in academic legal periodicals are cited and relied upon with significant frequency. Neither legislation nor judicial decision, with no stimulus from without, could have done for our law of evidence what has been done by James Bradley Thayer and by Wigmore. We must bear in mind that to-day the teacher of law works in the conditions of permanence and independence that were the strength of the common-law judge. He may do historical, critical, and analytical work that the judge cannot do. Moreover, he deals with the law or with great departments of the law as a whole, while the judge may look only at a fragment. It would be a misfortune if the power of our teachers of law to engage in research were to be curtailed at the very time when it has come to be most needed.

Not only must we turn once more to the law teacher to make the traditional materials of our legal system avail-

able for a new start in American law, even more must we turn to him for juristic development of the law which is growing up outside of the courts. The Federal Interstate Commerce Commission, established in 1887, and the English Railway and Canal Commission, established in 1888, have been followed in recent years by Public Service Commissions of one sort or another in substantially all English-speaking jurisdictions. The whole administration of the law of public utilities is coming to be committed to such bodies. The Federal Trade Commission, recently set up, is likely to absorb the larger part of the practical administration of the law governing the activities of great industrial enterprises in their relations with their competitors. Boards of probation and parole are acquiring the power to determine the duration and the nature of penal measures after conviction, and the judicial sentence is becoming a mere form. The whole subject of master and servant, so far as the law of torts is concerned, has been taken from the courts and confided to industrial commissions. And it is not unlikely that the administration of justice in other aspects of that relation will ultimately be confided to nonjudicial boards or commissions, as the temporary expedients of boards of conciliation, arbitration and the like give way to legal modes of adjusting industrial disputes. A clear body of law has grown up already as the result of the experience of a generation in the Interstate Commerce Commission, a body of law is forming under our eyes through the administration of Workmen's Compensation Acts by industrial commissions, and the exigencies of general peace and good order, if nothing else, must lead before long to a new body of law governing industrial disputes. In all these matters, however much society may turn for a time to the unfettered common sense of the layman, we may be assured that in the long run the paramount social interest in the general security will require administration of justice

according to law. In the end the trained lawyer will be called upon to formulate in legal principles the results of administrative experience, and in practice this means that the teacher of law must put system behind them and give them a rational development. Meanwhile there will be much to do along more familiar lines. Reconciliation of the new principles behind our Workmen's Compensation Acts with the general law of torts is a pressing problem. Collective bargaining is likely to compel us to think over again the whole subject of juristic personality in Anglo-American law. Criminal law and procedure call for the best efforts of thoroughly trained common-law lawyers acquainted with the social science of to-day. On the legislative side, the organization of courts, procedural reform, and penal legislation and administration make demands which are not to be met by legislative reference bureaus, manned by laymen trained merely in the political and social sciences, but call for the best in training and talent that our law schools can bring forth. Moreover, the gradual codification of our commercial law which began in the last decade of the nineteenth century is calling for a deeper and more critical knowledge of comparative law than has been worth while in the past.

All these things force us to consider how the Law School is to preserve the old professional training with all of its old effectiveness for its own purpose, and yet meet the demands upon the teachers for research and publication, and the demand upon the School for the training of lawyers who shall be of service in solving the social problems of the time as well as successful in practice. At first sight it might appear that radical changes in legal education will be called for, and there are many who so urge. But such a view is in reality superficial. The strength of the Law School has been in the continuity of development that has made each period in its history grow naturally out of what went before; that has utilized the past intelli-

gently; that has known how to work over given materials to make them available for new purposes. Its very effectiveness in handling the law of the nineteenth century is a guarantee of ability to turn this law to intelligent account as an agency of justice in the twentieth century. Hence the right line of development is not to set up a pretentious "school of jurisprudence" with elaborate courses in every phase of legal science and perhaps a number of "research professors." In a sense every professor should be a research professor; equally also he should be a teacher of the common law. For the life of the law is in its concrete application, and research divorced from the living law that must be taught in the professional curriculum will not be likely to achieve the results which alone could justify the large endowments demanded.

Nor is it in the right line of development to dilute the general professional curriculum with elaborate courses in jurisprudence, philosophy of law, comparative law, theory of legislation, criminology and the like. Such a plan runs counter to the whole experience of American law-teaching since Langdell. It calls for abstract courses, where over forty years of experience have taught us that legal instruction to be effective must be concrete. It calls for courses detached from application in the everyday work of tribunals, whereas Langdell's method requires us to study the applications and to derive our principles by critical investigation of the law in action.

We may look, therefore, for a natural and gradual development of the School along lines upon which it has already begun, holding fast to its traditional policy of not attempting all things, but instead attempting a few things of the highest moment and doing them as well as possible. Thus the regular dogmatic instruction will change from time to time with the progress of the law. Much that we have had to teach in the past is already yielding in importance to new elements in the legal system. Much of our

nineteenth-century law will presently be as obsolete as the learning of real actions and of the feudal law of estates in land which held so large a place in the curriculum of the Law School a century ago, or the elaborate and involved procedural law which was so important fifty years later, or the pedantic law of bailments which has given way to a modern doctrine of the obligations of public service. Such changes have gone on from time to time during the whole history of the School. More significant will be the development of graduate instruction and the fertilizing of the everyday professional teaching by ideas developed therein and by research, as the teachers give part of their time to the ordinary professional courses and part to graduate instruction and to research. Thus adequate provision will be made for jurisprudence, philosophy of law, comparative law, theory of legislation, administrative law and criminology, without yielding to the fallacious notion that no one may be expected to know anything unless he has had a formal "course" in it. Thus also more solidity will be given to the work of research and to graduate instruction. The one will grow naturally out of problems raised by study and teaching of the everyday law; the other will be given definiteness by the connection with concrete applications. Again, the teacher and investigator will be under the pressure of having to argue out his theories with students thoroughly trained in the dogmatic law, and this will make for clearer and better thinking in the purely theoretical courses. Above all, however, the teaching of the ordinary professional courses will be fertilized. The theoretical courses will make themselves felt in each dogmatic course. Each set will react upon the other, so that if the one will be rendered more exact and solid, the other will be made more scientific and liberal. For we must not forget that properly trained teachers with the right spirit may make courses in contracts or torts or

conflict of laws or constitutional law do the work of courses in philosophy of law, comparative law, and jurisprudence, may make a course in criminal law and procedure effective as an introduction to criminology, and may make a course in the law of public service companies an effective introduction to administrative law. Thus the everyday subjects of the professional curriculum may be made to achieve more for the general body of students than might be hoped for through formal detached courses in those subjects. The Law School has been proceeding along this line for some time.

Let it be repeated: the Law School is not to abandon all that has been learned since Langdell and give way to the idea that there must be a formal course in everything. Rather it will continue to seek to train a body of men who have so mastered the art of legal reasoning and have secured so solid a foundation in legal science and so firm a grasp of the materials of our legal system that they may approach new problems in new fields and old problems in unfamiliar fields with assurance and achieve results of real value. But this does not mean that the significant movements in legal science that have related it to the other social sicences and are making it over are to be ignored. It means rather that these movements are to be treated, not as revolutionary but as evolutionary.

Even with a program relatively so modest, it must not be expected that the Law School can go on permanently without an endowment adequate to the task. The mere guarding of what has been achieved in the way of thorough professional training calls for a more reasonable ratio of teachers to students, apart from any question of writing and research. Fifteen years ago the ratio of teacher to student was one to thirty-six; to-day it is one to seventy-two. In no other department of the University is the ratio at all so high, — in the Medical School one teacher to five students, in the School of Business Administration one to ten, in Arts and Sciences one to eighteen. This

does not include teachers who are not on Faculties. Moreover, the Law School classes are reaching the limit of size consistent with effective teaching, and division into sections must soon be made in the second year, as has long been done in the first year. All this would call for more teachers, even if the Law School were content to shirk its duty in a new period of legal growth and neglect its opportunities in that development of administrative law, of criminal law, of comparative law, and of the science of legislation which is going on about us.

These subjects are now taught chiefly to graduate students in a fourth year. But this graduate fourth year is expensive. It never can be expected to pay for itself, and yet distinctly adds to the reputation and usefulness of the School. Since its inauguration in 1911–12 there have been 26 candidates for the Doctor's degree, of whom 15 were successful. If the 8 graduate students for this year are included, there have been among the candidates 12 professors from other law schools.

Important as this task is, there has been no disposition on the part of the administration to do otherwise than keep the professional training distinctly the main purpose of the School.

As soon as the second-year courses are divided, a further difficulty will arise, — Langdell Hall must then be completed. In the meantime the physical running expenses of the School will continue to rise. In 1899–1900 the total charge for such items as the care of the buildings, heating and lighting, and other general expense was only $3500. Last year it was $21,000. This is due partly to the fact that there are now two buildings to be cared for instead of one; partly to the fact that labor and materials cost more; partly to the increase in the number of students, and partly to the fact that it has been considered equitable that the Law School should bear a proportion of general University expense.

The library will come to a standstill unless it gets financial support. In the last fifteen years its total expenses have risen from $19,000 to $35,000, but the amount spent for books has hardly increased. Over half of the present expenditure is for salaries, wages, binding, and stationery. Unless help is forthcoming, opportunities of the library in connection with recent developments of the law must be passed by.

An endowment is the only way to meet the situation.

Economy has been tried as far as possible, — in some places, like the purchase of books, too far. Salaries are moderate, ranging from $5000 to $7500 for a full Professor, while the librarian receives only $3500. The tuition fees will not yield a larger income. The number of students is not likely to increase for some years, and the fee itself ought not to be raised. The expense of the three years at the Law School is high enough as it is, and about a third of the men have to take long journeys from the south and west.

At the present time the School's capital is comparatively negligible. The total endowment of Harvard University, consisting of income-yielding funds, is over $28,000,000. The Medical School (with 358 students) has $3,632,000. The Law School (with 856 students) has $620,000, not including $100,000 earned by the School itself and set aside as a book fund; that is to say, the endowment of the Medical School is $10,145 per student, the endowment of the Law School $724 per student. After a century of service to legal science which has led the great English legal historian to link the glory of Harvard with the glory of Bologna and of Bourges, the Law School may confidently appeal for that endowment which is claimed as of course and is possessed by every other form of serious educational endeavor; without which no educational enterprise of moment may expect to achieve adequate results under the conditions of to-day.